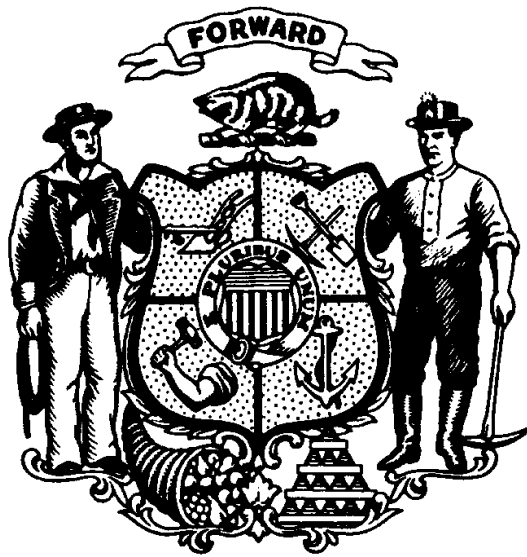


WISCONSIN ADMINISTRATIVE REGISTER

No. 518



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EMERGENCY RULES NOW IN EFFECT

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

EMERGENCY RULES NOW IN EFFECT (2)

Agriculture, Trade & Consumer Protection

1. Rules adopted amending ss. **ATCP 81.50 (2), 81.51 (2), and 81.52 (2)**, relating to grade standards for colby and monterey (jack) cheese.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that an emergency rule is necessary for economic reasons to protect the public welfare of the citizens of Wisconsin. The facts constituting the emergency are as follows:

(1) DATCP has adopted standards for grades of cheese manufactured and sold in Wisconsin under s. 97.177, Stats., and ch. ATCP 81, Wis. Adm. Code. Any cheese which carries a state grade mark must conform to the standards and characteristics of the labeled grade.

(2) Under current rules, colby and monterey (jack) cheese must contain numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

(3) Changes in cheese manufacturing technology, packaging and equipment have made it extremely difficult for many processors and packagers to achieve the numerous mechanical openings or open body character required by these top two grade categories. A majority of today's wholesale buyers and packagers prefer a closed body cheese for a variety of reasons, including ease of shredding and the ability to package "exact-weight" pieces with minimal variation and waste.

(4) Currently, a closed body cheese may be labeled or sold as Wisconsin grade B or "not graded." It cannot be labeled or sold as

Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand), nor can it command the premium price associated with these top two grade categories.

(5) Wisconsin is the only state with its own grade standards for colby and monterey (jack) cheese. The United States Department of Agriculture modified its grade standards for colby and monterey jack cheese in 1995 and 1996, respectively, in response to industry requests to allow an open or closed body. Buyers who cannot obtain the desired graded product in Wisconsin will likely switch to suppliers from other states. Once customers are lost they are difficult to regain.

(6) Wisconsin's dairy industry plays a major role in our state's economy. Approximately \$3 billion or 90% of Wisconsin's milk production goes into the manufacture of cheese. Lost business revenues harm the dairy industry, cause increased unemployment, and have a negative impact on the state's economy.

(7) Pending the adoption of rules according to the normal administrative rulemaking procedures, it is necessary to adopt emergency rules under s. 227.24, Stats. to protect the public welfare based on an economic emergency for the state's dairy industry and the subsequent impact on the general economy and citizens of this state.

Publication Date: August 8, 1998

Effective Date: August 8, 1998

Expiration Date: January 4, 1999

Hearing Date: September 14, 1998

Extension Through: March 4, 1999

2. Rules were adopted creating ss. **ATCP 10.68 and 11.58**, relating to fish farms and imports of live fish.

Finding of Emergency

(1) This emergency rule implements s. 95.60, Stats., which was created by 1997 Wis. Act 27.

(2) Under s. 95.60, Stats., a person who operates a fish farm must register annually with the Wisconsin department of agriculture, trade and consumer protection (DATCP). A person who imports live fish or fish eggs into Wisconsin must meet fish health requirements and obtain an import permit from DATCP. DATCP must establish registration and import permit standards by rule.

(3) On December 9, 1998, the Board of Agriculture, Trade and Consumer Protection (DATCP Board) approved final draft "permanent" rules to implement s. 95.60, Stats. Among other things, the rules establish fish farm registration standards and fish import standards. Before DATCP may adopt these final draft "permanent" rules, it must submit them for legislative committee review under s. 227.19, Stats. DATCP must then adopt and file the rules under s. 227.20, Stats., and publish them under s. 227.21, Stats. As a result, the final draft "permanent" rules will not take effect for several months.

(4) Current fish farm registration certificates will expire on December 31, 1998, before the final draft "permanent" rules take effect. The department must adopt a temporary emergency rule so it can process registration renewals pending the effective date of the final draft "permanent" rules. This emergency rule adopts, on a temporary basis, registration provisions contained in the department's proposed final draft "permanent" rules.

(5) This emergency rule also adopts, on a temporary basis, rules to prevent imports of diseased live fish and fish eggs that threaten the health of fish in Wisconsin fish farms and the Wisconsin natural environment. These temporary import requirements are based on requirements previously administered by the Wisconsin department of natural resources (DNR). The final draft “permanent” rules, when adopted, will expand upon these interim requirements.

(6) This emergency rule is needed to protect the public peace, health safety and welfare. Without this rule, DATCP would not be able to process fish farm registrations for 1999, or issue permits for live fish imports. Without the protections afforded by this emergency rule, Wisconsin fish farms and wild fisheries would also be exposed to an unnecessary risk of disease.

Publication Date: December 28, 1998
Effective Date: December 28, 1998
Expiration Date: May 27, 1999
Hearing Date: February 3, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Flammable & Combustible Liquids, Ch. Comm10)

Rules adopted revising **ch. Comm 10**, relating to regulation of flammable and combustible liquids.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety, welfare and the environment.

The facts constituting the emergency are as follows. Under ss. 101.09, 101.142 and 101.144, Stats., the Department protects public health, safety, welfare and the environment by promulgating rules for and administering the regulation of petroleum product storage tank systems and the storage and handling of flammable and combustible liquids. The purpose of the regulatory effort is to guarantee that storage tank systems and their contents are managed in a manner that is protective of life safety and the environment.

On December 22, 1998, a ten–year upgrade deadline comes to an end, and all tank systems falling under the United States Environmental Protection Agency’s rules are required to have been upgraded to comply with new and environmentally protective construction standards. After the final compliance date, the Department and its contracted agents will conduct inspections to guarantee that tank systems which are not in compliance have been shut down in accordance with state and federal rules. In those instances where owners or operators have not complied with the upgrade or shutdown requirements, immediate action must be taken to either prevent the tank systems from continuing to be used or prevent the delivery of additional petroleum product to the systems.

The shut down of noncomplying tank systems is a core environmental and financial issue. The tank systems that are not in compliance pose a continuing high–risk threat to the environment, and delay in action will continue an unnecessary environmental hazard. Additionally, new releases from these non–upgraded tank systems will add to the financial burden of the PECFA program, which is significantly over–subscribed. The rule included with this order is in response to environmental issues associated with non–upgraded tank systems.

Publication Date: December 11, 1998
Effective Date: December 11, 1998
Expiration Date: May 10, 1999
Hearing Date: March 3, 1999

[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Commerce

(Uniform Dwelling, Chs. Comm 20–25)

Rules adopted revising **Chs. Comm 20, 21, 22 and 23**, relating to energy efficiency in one– and 2–family dwellings.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public health, safety and welfare. The facts constituting the emergency are as follows:

The rule change that was to go into effect on February 1, 1999 consists of a complete rewrite of chapter Comm 22, which relates to energy efficiency in one– and 2–family dwellings, as well as miscellaneous changes to chapters Comm 20, 21 and 23. The department planned for a lead time of approximately 2 months between the time the code was made available and the code effective date. Because of difficulties in preparing and printing the code, the anticipated lead time could not be achieved. Several constituent groups, including builders, inspectors, and the Uniform Dwelling Code Council have asked for extra time to become familiar with the changes, once the complete code is made available. If this is not done, a great deal of confusion and economic hardship could result for builders, as well as homeowners. Enforcement of the new requirements could very greatly from one municipality to the next.

This emergency rule delays the effective date of the proposed changes to chs. Comm 20, 21, 22 and 23 from February 1, 1999 to May 1, 1999.

Publication Date: January 23, 1999
Effective Date: February 1, 1999
Expiration Date: July 1, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Petroleum Environmental Cleanup Fund Interagency Responsibilities, Ch. Comm 46)

Rules were adopted creating **ch. Comm 46**, relating to the Petroleum Environmental Cleanup Fund Interagency Responsibilities.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under ss. 101.143 and 101.144, Stats., the Department protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA Fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. In administering this fund, the Department has relied upon a Memorandum of Understanding with the Department of Natural Resources for classifying contaminated sites, disbursing funds, and addressing other statements of policy that affect the two Departments.

On September 17, 1998, the Joint Committee for Review of Administrative Rules adopted a motion pursuant to s. 227.26(2)(b), Stats., that directs the Department and the Department of Natural

Resources to jointly adopt the above portions of the Memorandum of Understanding and related policy issues as an Emergency Rule. The rule included with this order is in response to that directive.

Publication Date: January 1, 1999

Effective Date: January 1, 1999

Expiration Date: May 31, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Rental Unit Energy Efficiency, Ch. Comm 67)

Rules were adopted revising **ch. Comm 67**, relating to rental unit energy efficiency.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under s. 101.122, Stats., Department protects public health, safety, and welfare by promulgating energy efficiency requirements for rental units. 1997 Wis. Act 288 amends s. 101.122, Stats., to change the scope of the rules that the Department develops under that law. Those portions of the Act were effective the day after publication, and the rules adopted by the Department under the authority of that law are hereby amended to be consistent with 1997 Wis. Act 288.

This emergency rule excludes the following buildings from the rental unit energy efficiency

- Buildings of one or two rental units that were constructed after December 1, 1978.
- Buildings of three or more rental units that were constructed after April 15, 1976.
- Condominium buildings of three or more dwelling units.

This rule also limits the application of rental unit energy efficiency requirements to the following items:

- Attics
- Furnaces and boilers
- Storm windows and doors, with an option to meet an air infiltration performance standard for the thermal envelope of the building
- Sill boxes
- Heating and plumbing supply in unheated crawlspaces
- Shower heads

This rule also eliminates the expiration of the certificate of code compliance after 5 years.

Publication Date: June 30, 1998

Effective Date: June 30, 1998

Expiration Date: November 27, 1998

Hearing Date: August 14, 1998

Extension Through: January 25, 1999

EMERGENCY RULES NOW IN EFFECT

Commerce

(Financial Resources for Communities, Chs. Comm 105 to 128)

Rules adopted creating **ch. Comm 118**, relating to the Wisconsin Promise Challenge Grant Program.

Finding of Emergency

On July 16, 1998, 1997 Wis. Act 237, took effect. The act created Section 1901(lz) which appropriated \$424,000 for fiscal year 1998–99 that may be awarded in the form of grants by the National and Community Service Board attached to the Department of Commerce to any countywide consortium. Countywide consortiums who agree to provide five fundamental resources intended to mentor, nurture, protect, teach and serve persons under the age of 26 years are eligible to receive Wisconsin Promise Challenge Grants. The amount of the grant ranges from \$3,000 to \$15,000, depending on the number of underserved youth who are to receive the five fundamental resources. In order to be eligible, the grant recipient is required to match the grant, in cash, in an amount that is not less than twice the amount of the grant money received. In addition the law, specifies conditions on the use of the grant monies and requires documentation on the number of underserved youths who received the five fundamental resources and the positive outcomes and result of those efforts. Since funds are only available for this fiscal year and the law sunsets on January 1, 2000, the Department is promulgating an emergency rule in order to make these funds and the grant program available as quickly as possible so counties may provide the five fundamental resources to underserved youth.

This emergency rule was developed in consultation with the National and Community Service Board, the Department of Health and Family Services and the Department of Administration.

Publication Date: September 12, 1998

Effective Date: September 12, 1998

Expiration Date: February 9, 1999

Hearing Date: November 30, 1998

EMERGENCY RULES NOW IN EFFECT (3)

Department of Corrections

1. Rules were adopted amending **s. DOC 328.21**, relating to absconders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: A recent legislative enactment providing funding for the Department of Corrections to create an absconder unit in southeastern Wisconsin. Currently there are 7,694 probationers or parolees that have absconded from community supervision. To make community supervision more meaningful and promote accountability among offenders the legislature directed the Department of Corrections to make efforts to locate and apprehend offenders that have absconded from community supervision. The current administrative rule allows the Department of Corrections to search an offenders residence only for contraband. This rule

amendment allows a search of an offender's residence for contraband or an offender.

Publication Date: December 3, 1998
Effective Date: December 3, 1998
Expiration Date: May 2, 1999
Hearing Dates: March 1 and 3, 1999
 [See Notice this Register]

- Rules were adopted revising **ch. DOC 349**, relating to holding juveniles in municipal lockup facilities.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that rules are necessary for the immediate preservation of public safety. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 296, created s. 938.209(2m), Stats., which permits the holding of juveniles in municipal lockup facilities if the facilities meet certain criteria. This act took effect on July 1, 1998. A municipal lockup facility may only hold juveniles who are alleged to have committed a delinquent act if the department of corrections approves the facility for the holding of juveniles. In addition, the lockup facility may only hold the juvenile for no more than six hours. Also, there must be sight and sound separation between any juveniles and adults being held in the lockup. Finally, the lockup facility may only hold the juvenile for investigative purposes.

Under current rule a municipal lockup facility may not hold juveniles. The act authorizes the department of corrections to promulgate rules establishing minimum requirements for the approval of a municipal lockup facility as a suitable place for holding juveniles who are alleged to have committed a delinquent act and for the operation of the facility. The permanent rule process has been started. However, the permanent rule process will take approximately nine months to complete. Emergency rules are necessary to establish an approval process and operational standards for the safety of the public and juveniles while permanent rules are being developed.

This order:

- Adopts the statutory definitions of adult, delinquent, and juvenile.
- Defines the term secure custody status.
- Establishes the authority and purpose of establishing minimum standards for the holding of juveniles in municipal lockup facilities.
- Prohibits the holding of juveniles in municipal lockup facilities, except if the juvenile is alleged to have committed a delinquent act.
- Requires that the lockup facility provide juveniles notification of policies and procedures of the facility regarding the holding of juveniles and facility programs, including health screening and care, suicide prevention, control and administration of medications, and communicable disease control.
- Provides that only juveniles who are alleged to have committed a delinquent act may be held in a municipal lockup facility.
- Provides that juveniles who are alleged to have committed a delinquent act may be placed in secure custody status for a period of time not to exceed 6 hours.
- Provides that the lockup administrator shall develop and implement policies and procedure to ensure sight and sound separation between juveniles and adults who are being held in the lockup facility.
- Provides that lockup facility staff shall physically observe juveniles at least once every 20 minutes at irregular intervals and shall document the observations. If the juvenile is identified by the facility staff as being at risk (for example, suicidal tendency, under the influence of drugs or alcohol, or mental disturbance) the observations shall be at least once every 15 minutes at irregular intervals.

10. Requires that juvenile records be maintained in a confidential manner and kept separate from adult records, in accordance with s. 938.396, Stats.

The order provides for including in chapter DOC 349, Municipal Lockup Facilities, the rules for holding juveniles who are alleged to have committed a delinquent act.

Publication Date: December 10, 1998
Effective Date: December 10, 1998
Expiration Date: May 9, 1999
Hearing Date: February 15, 1999

- Rules adopted creating **ch. DOC 330**, relating to pharmacological treatment of serious child sex offenders.

Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 284, created s. 304.06(1q) Stats., which will become effective January 1, 1999, and authorizes the department to require pharmacological treatment (chemical castration) for certain child sex offenders as a condition of probation or parole to accomplish the objectives of protection of the public or treatment of serious child sex offenders. Pharmacological intervention cannot begin without administrative rules. Development and promulgation of permanent rules will take approximately six months to complete. Emergency rules are necessary to implement the program for the safety of the public while permanent rules are being developed.

Publication Date: January 1, 1999
Effective Date: January 1, 1999
Expiration Date: May 31, 1999
Hearing Dates: March 1, 2 and 3, 1999
 [See Notice this Register]

EMERGENCY RULES NOW IN EFFECT

Emergency Response Board

Rules adopted revising **s. ERB 1.04**, relating to reporting requirements for gasoline and diesel fuel present at 10,000 pounds or more at retail gas stations.

Finding of Emergency and Rule Analysis

The Wisconsin Division of Emergency Management finds that an emergency exists and that adoption of this rule is necessary for the immediate preservation of public health, safety, and welfare. The facts constituting the emergency are as follows:

The U.S. Environmental Protection Agency has stated in writing, its intent to implement a rule change effective March 1, 1999. The rule change will increase the 42 USC 11021 and 11022 reporting threshold for gasoline to 75,000 gallons and for diesel fuel to 100,000 gallons, when stored in below ground tanks at retail gas stations. This change will have the effect of exempting most gasoline stations from EPCRA reporting requirements. It will also mean that gasoline and diesel fuel that is present in 10,000 pounds or more will not be uniformly reported under EPCRA. If implemented, this rule change will occur during a reporting period and will take effect on the deadline for submission of 1999 reporting information, which applies to chemicals that were present in 1998. This will create a situation where facilities reporting prior to the rule change would be reporting under one requirement and those reporting after the March 1, 1999 deadline would be reporting under a different requirement. It is not clear which requirement would affect those facilities that submit documentation prior to the intended rule change, that is, by the reporting deadline, and whether

these facilities would have to amend their submissions to be in compliance with the law.

The most commonly spilled substances in Wisconsin are petroleum products, gasoline and diesel fuel. This information is important to fire departments as well as Local Emergency Planning Committees as an emergency response planning tool. The Tier Two chemical information is provided to the local fire department with jurisdiction over the facility and to the appropriate Local Emergency Planning Committee. This is the only comprehensive list of hazardous materials that is available to fire departments and Local Emergency Planning Committees.

Further, in Wisconsin, individual preprinted forms are printed in mid December and mailed out by the first week of January to assist facilities in meeting reporting requirements. This is well before the time when U.S. EPA has stated that they intend to implement a rule change. Because EPA intends to implement the change on the March 1, 1999 reporting deadline, it is not possible to mail forms out at that time and have facilities make the necessary submissions by the March 1, 1999 deadline. Wisconsin facilities have come to expect that inventory reporting materials will be mailed out in a time frame that will allow adequate time for the facility to meet the March 1, 1999 reporting deadline. Facilities that fail to submit the necessary reporting materials by the March 1, 1999 reporting deadline would be in non-compliance with federal and state EPCRA reporting requirements.

Individual states do not have the authority to implement requirements under EPCRA which are less stringent than the federal requirements. This emergency rule would maintain the existing reporting requirements that have been in place since the inception of the program in 1986. Specifically, this rule states that the reporting thresholds for gasoline and diesel fuel would be maintained at 10,000 pounds for retail gas stations. This emergency rule will allow Wisconsin Emergency Management the ability to distribute reporting materials in a timely manner and will permit the facilities to submit the necessary paperwork prior to the March 1, 1999 deadline. By allowing facilities sufficient time prior to the March 1, 1999 deadline, they will have the opportunity to make the necessary submissions under EPCRA and to remain in compliance with federal and state law. This will also insure that all gasoline and diesel fuel stored in amounts of 10,000 pounds or more in the state is reported under EPCRA. This in turn will insure that all fire departments and Local Emergency Planning Committees will continue to have access to a comprehensive listing of hazardous materials under the Emergency Planning and Community Right-to-Know Act.

Publication Date: January 20, 1999
Effective Date: January 20, 1999
Expiration Date: June 19, 1999

EMERGENCY RULES NOW IN EFFECT

Financial Institutions **(Division of Banking)**

Rules adopted renumbering and revising **ch. RL 41** to be **ch. DFI-Bkg 41**, relating to mortgage banking.

Exemption From Finding of Emergency

Statutory Authority: ss. 224.72 (8) and 224.73 (3); and 1997 Wis. Act 145, Section 72.

This emergency rule sets forth the registration and renewal of registration fees for mortgage bankers, loan originators and mortgage brokers; the transfer fee for loan originators; and the

registration periods for all registrations and renewals of registrations.

Publication Date: December 4, 1998
Effective Date: December 4, 1998
Expiration Date: May 3, 1999
Hearing Date: March 3, 1999
[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (3)

Health & Family Services **(Management, Technology & Finance,** **Chs. HFS 1--)** **(Health, Chs. HFS 110--)**

1. Rules adopted creating **ch. HFS 13** and revising **ch. HSS 129**, relating to reporting and investigating caregiver misconduct.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Since July 1, 1991, the Department has had rules, s. HSS 129.10, which establish and provide for the maintenance of a registry of persons eligible by training and testing to be employed in Wisconsin as nurse assistants working in hospitals, nurse assistants working in nursing homes, home health agency aides and, since October 1, 1991, hospice program aides. The rules implemented s. 146.40 (4g), Stats. The rules were amended by emergency order effective April 1, 1992, to add to the registry, as directed by s. 146.40 (4g) and (4r), Stats., all substantiated findings of allegations that persons working in any of these caregiver capacities had abused or neglected a resident or patient or misappropriated a resident's or patient's property, and making that information available to prospective employers and other interested persons on request.

This rulemaking order amends ch. HFS 129 to take out of it the misconduct part of the current registry, that is, the part consisting of substantiated findings of misconduct toward clients by caregivers working as nurse aides in hospitals or nursing homes or for home health agencies or hospice programs, and to include that part in a new ch. HFS 13 created by this order.

A recent session law, 1997 Wis. Act 27, amended s. 146.40 (4g) and (4r), Stats., to provide for expansion of the misconduct part of the registry so that, beginning October 1, 1998, the Department would add to the registry substantiated findings of allegations that any other person employed by or under contract with a hospital, nursing home, home health agency or hospice program or any person employed by or under contract with any of several other types of facilities, agencies and programs or services licensed, certified or registered by the Department abused or neglected a client served by the facility, agency or program or service or misappropriated a client's property. The other types of "entities" covered by the expanded misconduct part of the registry and the reporting, review and investigation, entering findings and appeal procedures under s. 146.40 (4r), Stats., are the following: community-based residential facilities, residential care apartment complexes (formerly called assisted living facilities), certified adult family homes (only if certified by the Department), licensed adult family homes (only if licensed by the Department), certified community mental health and substance abuse programs or services, rural medical centers and ambulance service providers.

The new ch. HFS 13 covers the structure of the misconduct part of the caregiver registry, the information included in it and release of registry information; a requirement that an entity upon learning

of an incident of alleged caregiver misconduct take whatever measures are necessary to protect clients pending a finding; mandatory reporting by entities of allegations of caregiver misconduct, with penalties for failure to report incidents; reporting by other persons; review by the Department of reports received from entities and concerned individuals alleging abuse or neglect of a client or misappropriation of a client's property, and follow-up investigation by the Department as necessary; determination by the Department either that an allegation is or is not substantiated, and notice to the subject of the report, if an allegation is substantiated, that the finding will be entered on the misconduct part of the caregiver misconduct registry, and the consequences of that action (which for some persons employed by or under contract with an entity may mean being barred indefinitely from similar employment and for others being barred from similar employment unless rehabilitation is demonstrated), unless he or she contests that determination by requesting a hearing; notice to the subject of a report that if the finding is included in the registry, he or she may add a rebuttal statement which will be included with the finding; and how to request a hearing, how the hearing will be conducted and the hearing decision.

This order creating ch. HFS 13 and amending ch. HSS 129 is being published as an emergency rulemaking order to take effect on October 1, 1998. That is the date on which the amendments to s. 146.40 (4g) and (4r), Stats., that expand the misconduct part of the registry will take effect. The rules are necessary for implementation of the amended statutes. The intent of the amended statutes and new rules is to better protect clients of the specified Department-regulated facilities, agencies, programs and services from being harmed. The rules are being published as emergency rules so that they can go into effect when the amended statutes take effect rather than up to 9 months later which is how long it will take to promulgate permanent rules.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999
Hearing Dates: January 12, 20 & 26, 1999

2. Rules adopted creating ch. HFS 12, relating to caregiver background checks.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Sections 48.685 and 50.065, Stats., recently created by 1997 Wisconsin Act 27, apply to the Department in its functions of licensing, certifying, registering or approving some persons to provide care or treatment to other persons; to county social service and human service departments that license foster homes or treatment foster homes for children and carry out adoption home studies; to private child-placing agencies licensed to do the same; and to school boards that contract for day care programs under s. 120.13(14), Stats. The law also applies to the entities licensed, certified, registered or approved and their employees or contracted service providers.

An agency is prohibited from licensing, certifying, registering or approving a person if the agency knew or should have known that the person has been convicted of, or has a pending charge for, a serious crime, is found to have abused or neglected a client or child or to have misappropriated a client's property; or is required to be credentialed by the Department of Regulation and Licensing (DRL) but whose credential is not current or is limited so as to prevent the provision of adequate client care. Similarly, entities planning to hire or contract with a person expected to have access to clients or children may not hire or contract with the person if the entity knew or should have known of the existence of a prohibited condition.

With respect to a person applying for a license to operate an entity or for approval to reside at an entity, an agency is required to obtain

a criminal history search, information contained in the Department's caregiver misconduct registry, DRL information regarding credential status, if applicable, and Department information regarding any substantiated reports of child abuse or neglect and licensing history information. That information must also be obtained by entities for prospective employees and contractors.

The Department is required to develop a background information form and provide it to any regulated or approved person, and a county department and licensed child-placing agency is required to provide it to a foster home or treatment foster home applicant or pre-adoptive applicant and a school board is to provide the Department's background information form to any proposed contracted day care applicant or provider under s. 120.13 (14), Stats. Likewise, an entity is to provide the background information form to any employee or prospective employee having or expected to have access to any of its clients. If the background information form returned to an entity by an employee or prospective employee indicates that the person is not ineligible to be employed or contracted with or permitted to reside at an entity for a reason specified under the statutes or as provided in rule, an entity may employ or contract with the person or permit the person to reside at the entity for not more than 60 days pending the receipt of background check information.

For some serious crimes that would otherwise bar a person from regulatory approval or from being employed by or under contract with or residing at an entity, the statutes permit a person convicted of a crime, provided certain conditions are met, to ask an agency for rehabilitation review, that is, for an opportunity to demonstrate that he or she is rehabilitated and so the bar can be lifted.

These are the Department's rules for administration of ss. 48.685 and 50.065, Stats., as created by Act 27 and amended by 1997 Wisconsin Act 237. The rules repeat the statutory requirements and add more detail for administering them, add procedures for handling rehabilitation review requests, add definitions for "serious crime" and "under the entity's control" and other pertinent definitions and add a crimes list as Appendix A.

The rules are being published by emergency order to take effect on October 1, 1998, the same date that the statutes they implement will take effect, rather than up to 9 months later which is how long it will take to promulgate permanent rules. The rules are necessary for implementation of the new statutes. The intent of the statutes and rules is to better protect clients of the regulated service providers from being harmed.

The new background check statutes and rules apply beginning October 1, 1998 to entities initially approved on or after that date, persons that entities hire or contract with on or after that date and nonclients who take up residence at an entity on or after that date. The statutes and rules apply beginning October 1, 1999 to entities initially approved prior to October 1, 1998, persons that entities hired or contracted with prior to October 1, 1998 and nonclients who lived at an entity prior to October 1, 1998.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999
Hearing Dates: January 12, 20 & 26, 1999

3. Rules adopted amending chs. HFS 12, relating to background checks.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department on October 1, 1998 published an emergency rulemaking order creating ch. HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to persons who need that care or treatment, and for barring persons because of specified convictions, findings or charges substantially related to the care of clients from operating a service provider organization, providing

care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider. Chapter HFS 12 includes an appendix which consists of a list of crimes. Some of the listed crimes **permanently** bar a person who was ever convicted of the crime from receiving regulatory approval from the Department to provide care or treatment to vulnerable people; from being licensed by a county human service or social service department or by a private child-placing agency to operate a foster home for children; from contracting with a school board to provide a day care program; from being employed by or under contract to a service provider to provide care or treatment to the service provider's clients; and from residing as a nonclient at the service-providing entity. Others of the listed crimes temporarily bar a person convicted of the crime from doing any of those things, pending demonstration that the individual has been rehabilitated. While the remaining few crimes in the Crimes List, called "less serious crimes," do not bar a person with a conviction from providing care or treatment to others, they do require the regulatory agency or employer to impose special precautionary measures to ensure the protection of persons receiving care or treatment.

This order modifies the Crimes List published on October 1, 1998 as Appendix A to ch. HFS 12.

The original Crimes List consists of 159 crimes listed by statute number, 45 of which are permanent bar crimes for all programs. Some 105 crimes are rehabilitation review-eligible crimes (bar with rehab crimes), and 3 are less serious crimes (crimes of lesser significance than serious crimes). As for unlisted crimes, a regulatory agency, employer or contractor is supposed to consider whether conviction for any unlisted crime is substantially related to caregiving and, if so, can treat it as a permanent bar crime or a crime of lesser significance, and take action accordingly.

The modified Crimes List consists of 156 crimes listed by statute number, name and program sanction, 26 of which are permanent bar crimes for all programs. Some crimes have been moved from permanent bar status to bar with rehab status, crimes of lesser significance status or substantially related (unlisted) status, and some crimes have been moved from bar with rehab status to crimes of lesser significance status or substantially related (unlisted) status. The crimes of lesser significance are removed altogether from the Crimes List and made a separate list under s. HFS 12.11(5) (a) 3., so that the Crimes List is left with only "serious crimes."

The Department is modifying the Crimes List at this time because after publication of the original list, that is, as the Crimes List began to be used to make decisions about licensing or certifying service providers and hiring or contracting for caregiver staff, and especially in anticipation of agencies having to withdraw some current licenses and certifications and entities having to dismiss some current caregiver staff and terminate some caregiver contracts, Department staff heard from and met with many affected individuals and representatives of affected programs and discussed with them the need, reasonableness and practicality of categorizing some criminal convictions in ways they had been categorized. These discussions led the Department to reconsider the appropriateness of the sanctions for some of the specified crimes, in particular some of the crimes that the Department had designated permanent bar crimes. The Department also determined once the Crimes List began to be used that corrections and clarifications were needed in it.

The Department is modifying the ch. HFS 12 emergency rules by emergency order because of the critical importance of the appended Crimes List for proper implementation of the statutory caregiver background check requirements. Those requirements are directed at protecting people receiving care and treatment from being harmed. The revised Crimes List is part of the proposed permanent rules that

will replace the emergency rules, but the replacement permanent rules will not take effect until about June 1, 1999.

Publication Date: December 12, 1998

Effective Date: December 12, 1998

Expiration Date: May 11, 1999

EMERGENCY RULES NOW IN EFFECT

Health and Family Services

(Community Services, Chs. 30--)

Rule was adopted amending s. HFS 94.24 (2)(e), relating to searches of rooms and personal belongings of patients at the Wisconsin Resources Center.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules included in this order is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department operates the Wisconsin Resource Center near Oshkosh, a mental health treatment facility for two groups of people: (1) inmates of correctional institutions whose behavior presents a serious problem to themselves or others in state correctional facilities and whose mental health treatment needs can be met at the Center, and (2) persons who have been found by a court or jury under s. 980.05, Stats., to be sexually violent persons and who have therefore been committed to the custody of the Department under s. 980.06, Stats., for control, care and treatment, whose commitment order specifies institutional care and who have been placed by the Department at the Center under s. 980.065, Stats. About 60% of the 370 patients at the Center are inmates of correctional institutions and about 40% are persons committed to the Department under ch. 980, Stats.

The security, discipline, care and treatment of inmates of correctional institutions at the Wisconsin Resource Center are governed by administrative rules of the Wisconsin Department of Corrections. Chapter HFS 94, the Department's rules relating to the rights of patients receiving treatment for a mental illness, a developmental disability, alcohol abuse or other drug abuse, applies to the inmates of correctional institutions at the Center only in relation to patient rights specified in s. 51.61 (1) (a), (d), (f), (g), (h), (j) and (k), Stats. However, the entire ch. HFS 94 applies to patients at the Center who are there under a ch. 980, Stats., commitment.

At the Wisconsin Resource Center staff until recently have been making random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats. A patient has challenged the practice in a lawsuit, claiming that it violates s. HFS 94.24 (2) (e) which permits a search only when there is documented reason to believe that security rules have been violated, unless the search is of rooms and belongings in a forensic unit. Patients at the Center who are there under ch. 980, Stats., commitments are not residents of a forensic unit; a commitment under ch. 980, Stats., is considered a civil commitment. The court handling the case is expected to rule in favor of the patient. Therefore, the Center has temporarily suspended random searches, pending amendment of the rule.

This order amends s. HFS 94.24 (2) (e) to permit searches of the rooms and personal belongings of not only inpatients of forensic units but also inpatients of a secure mental health unit or facility

under s. 980.065, Stats., and similar inpatients of the maximum security facility at the Mendota mental health institute, and not only when there is documented reason to believe that security rules have been violated but under other circumstances as well as specified in written facility policies. This change will permit the Wisconsin Resource Center to resume random searches of the rooms and personal belongings of patients who have been committed to the Department under ch. 980, Stats.

This rule change is being promulgated on the advice of counsel by emergency order because of the length of the permanent rulemaking process and because random searches of the rooms and belongings of ch. 980, Stats., patients at the Wisconsin Resource Center need to be resumed without delay to protect other patients and staff and, in the long run, the general public.

These patients have been committed or are being detained because there is probable cause to believe they are dangerous individuals who are disposed to commit future acts of sexual violence. Many have documented histories of other types of criminal activity, including fraud, theft and physical assault. Many also have a history of drug/alcohol dependence and gang activity. The intent of ch. 980, Stats., is to protect the public and provide treatment to this patient population. The major difference between this population and other patient populations is this population has a significantly higher percentage of individuals diagnosed with anti-social personality disorders and, as such, they have consistently shown deliberate disregard for the rights of others and a willingness to break the law.

The Wisconsin Resource Center is responsible for maintaining a therapeutic and safe environment for its patients. Yet the ch. 980 patients in general have consistently found 'creative' ways to break facility rules. Therefore, unless there are effective mechanisms, such as random searches, in place to monitor their activity, these patients will use their rights to continue their criminal activity and to violate the rights of others.

Random searches help the Center identify and prevent numerous violations of facility rules that are safety and security related or countertherapeutic to the patients. These searches can also deter patients from harboring dangerous items in their rooms. These could go undetected and be at some point used in harming another person or hinder or block the individual's treatment. They include weapons, drugs, indications of planning underway to rape or assault another patient or a staff member, sexually explicit material which may interfere with treatment progress, and stolen property including credit cards.

A facility cannot effectively treat these patients without the ability to effectively monitor and confront crimogenic behaviors and patterns. Random searches are a very effective treatment tool in this respect. They also reduce the likelihood of false positives for releasing or discharging a patient when evaluating for continued pertinence of the commitment criteria.

Publication Date: August 15, 1998
Effective Date: August 15, 1998
Expiration Date: January 11, 1999
Hearing Date: December 17, 1998
Extension Through: March 11, 1999

EMERGENCY RULES NOW IN EFFECT (3)

Health and Family Services

(Health, Chs. HSS/HFS 110—)

1. Rules adopted revising **ch. HFS 163**, relating to certification for the identification, removal and reduction of lead-based paint hazards.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Exposure to lead in paint, dust or soil is known to have both short term and long term deleterious effects on the health of children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage and even death. Occupational exposure in adults may result in damage to the kidneys, the central nervous system in general, the brain in particular and to the reproductive system. Children born of a parent who has been exposed to excessive levels of lead are more likely to die during the first year of childhood. About one child in six has a level of lead in the blood that exceeds the threshold for risk.

A residential dwelling or other building built before 1978 may contain lead-based paint. When lead-based paint on surfaces like walls, ceilings, windows, woodwork and floors is broken, sanded or scraped down to dust and chips, the living environment can become a source of poisoning for occupants. When it becomes necessary or desirable to identify lead hazards or reduce them, it is imperative that persons who provide these services be properly trained to safely and accurately perform lead-based paint activities.

The Department is authorized under s. 254.176, Stats., to establish by rule certification requirements for persons who perform or supervise lead-based paint activities, including lead hazard reduction or lead management activities. Under s. 254.178, Stats., any training course that is represented as qualifying persons for certification must be accredited by the Department and the instructors approved by the Department. Subject to review by a technical advisory committee under s. 254.174, Stats., the Department is authorized under s. 254.167, Stats., to establish procedures for conducting lead inspections and, under s. 254.172, Stats., to promulgate rules governing lead hazard reduction.

The Department's rules for certification to perform lead-based paint activities and for accreditation of training courses are in ch. HFS 163, Wis. Adm. Code. Chapter HFS 163 was promulgated by emergency order in July 1993 to establish certification requirements, including training, for lead abatement workers and lead supervisors, accreditation requirements for the corresponding training courses and criteria for approval of instructors.

The Department amended ch. HFS 163 effective February 18, 1997, by an emergency order. The emergency order added the certification disciplines of lead inspector, lead project designer and lead risk assessor for persons engaged in lead management activities and added accreditation requirements for the corresponding training courses. In addition, the order added certification fees for the new disciplines and course accreditation application fees.

Several years ago, Congress authorized the U.S. Environmental Protection Agency (EPA) to promulgate regulations that establish minimum certification and work practice standards for lead-based paint professionals, minimum accreditation standards for the courses that prepare persons for certification and minimum standards for approving state and tribal lead certification and accreditation programs. EPA published these regulations in the August 29, 1996, Federal Register as 40 CFR 745, Subparts L and Q.

If a state or Indian tribe fails to request and receive EPA approval for its program by August 30, 1998, EPA is charged with operating a lead training and certification program for that state or tribe. This means that individuals currently certified by, and training courses currently accredited by, the Department of Health and Family Services would also have to apply to EPA and comply with all EPA regulations.

Failure to obtain EPA authorization may negatively affect U.S. Department of Housing and Urban Development (HUD) or EPA grants to local public health agencies for lead hazard reduction and lead poisoning prevention activities and funding for home loans, weatherization loans and other housing assistance. Lack of federal funding may limit the ability of citizens to purchase homes, weatherize homes, or reduce lead-based paint hazards in homes.

In addition, the State lead training and certification program operates primarily on funding from EPA grants. EPA lead grant funding for FFY 99 is dependent on having an approvable program. Without adequate funding, the lead training and certification program be unable to maintain the current high level of responsiveness to complaints about lead hazards and requests for assistance.

Inspections or risk assessments conducted under the real estate disclosure regulations must be conducted by qualified lead professionals. Failure to achieve EPA authorization of the State's lead training and certification program may result in a lack of qualified lead professionals.

Under EPA authorization, states are able to diverge from EPA regulations as long as the alternative is as protective of human health and the environment as the EPA regulations. This flexibility would allow the State lead training and certification program to be more responsive to State needs, which may be different from the needs of the eastern states, the needs of which were reflected in the federal regulations.

Before the Department can receive EPA approval of its lead training and certification program, changes to the current State lead certification and accreditation program must be made. These necessary changes are the basis for this emergency order and include the following major revisions to the current rules:

Certification

- Adds certification requirements for lead companies in addition to individuals.
- Changes the current optional certification examination to a mandatory certification examination for supervisors, inspectors and risk assessors.
- Adds a limited term certification called "interim certification" for individuals waiting to take the certification exam.
- Provides for a maximum 3-year certification period from the completion date of the most recent training course instead of a one-year or 2-year period from the date certification is issued.
- Revises how worker–safety training is received by requiring that worker–safety training be completed as a prerequisite to lead training rather than be required as part of a lead training course.
- Reduces the required frequency of refresher training from every 2 years to every 3 years.

- Adds work practice standards for lead–based paint activities.

Accreditation

- Adds a mandatory hands–on skills assessment for hands–on activities.
- Adds a requirement for work practice standards to be incorporated into training.
- Revises topics and reduces hours for worker and supervisor courses, designed as prerequisite worker–safety training, followed by a 16–hour worker course, with an additional 16–hour supervisor course to follow when supervisor certification is desired.
- Adds a requirement for renewal of accreditation, with accreditation issued for a maximum of 4 years, in place of the current no–expiration accreditation.

Enforcement and oversight

- Expands details on potential enforcement actions in response to EPA's requirement for flexible and effective enforcement actions.
- Adds a requirement for reporting information about lead management activities to the Department to allow the Department to conduct targeted enforcement.

In addition to the changes specifically required by EPA before the State may apply to EPA for approval of its program, the revised rules establish a new discipline called worker–homeowner to meet the needs of homeowners who EPA requires be certified in order to conduct abatement in their own homes when a child has an elevated blood lead level. This special certification category allows the Department to establish minimum training and work practice requirements that will encourage more homeowners with lead

poisoned children to permanently abate the lead hazards in their homes than is likely to occur when certified companies must be hired.

Public comment was sought in the development of the rule revisions. On September 5, 1997, the Department published notice in the Wisconsin State Journal of its intent to seek EPA authorization. The notice outlined the major changes needed to bring the state program into compliance with EPA approval criteria. In addition the public was invited to submit comments or request a hearing. No comments were received in response to this notice.

The work practice standards under s. HFS 163.14 were reviewed and approved by a technical advisory committee appointed by the Department in accordance with ss. 254.167, 254.172 and 254.174, Stats.

Publication Date: August 29, 1998
Effective Date: August 29, 1998
Expiration Date: January 25, 1999
Hearing Dates: November 30, December 1, 7 & 9, 1998

2. Rules adopted amending ss. HFS 119.07 (6) (b) and 119.15, relating to the Health Insurance Risk–Sharing Plan.

Exemption From Finding of Emergency

Section 149.143 (4), Stats., as affected by 1997 Wisconsin Act 27, permits the Department to promulgate rules required under s. 149.143(2) and (3), Stats., as affected by Act 27, by using emergency rulemaking procedures except that the Department is specifically exempted from the requirement under s. 227.24(1) and (3), Stats., that it make a finding of emergency. These are the rules. Department staff consulted with the HIRSP Board of Governors on December 11, 1998 on the proposed rules, as required by s. 149.20, Stats.

Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk–Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. One type of coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This coverage is called Plan 2. Medicare (Plan 2) has a \$500 deductible. Approximately 17% of the 7,123 HIRSP policies in effect on October 31, 1998 were of the Plan 2 type.

The Department through this rulemaking order is amending ch. HFS 119 in order to update HIRSP Plan 2 premium rates by just over 10% in accordance with the authority and requirements set out in s. 149.143 (3) (a), Stats. The Department is required to set premium rates by rule and the rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in accordance with the authority and requirements set Out in s. 149.143 (2)(a)3. and 4., Stats., as affected by Act 27.

Publication Date: December 31, 1998
Effective Date: January 1, 1999
Expiration Date: May 31, 1999

3. Rules adopted creating ch. HFS 114, relating to neonatal intensive care unit training grants.

Exemption From Finding of Emergency

The Legislature in s. 9122 (3tz) of 1997 Wisconsin Act 237 directed the Department to promulgate rules required under s. 9122 (3ty) of 1997 Wisconsin Act 237 by using emergency rulemaking procedures but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency. These are the rules.

Analysis Prepared by the Department of Health and Family Services

Section 9122 (3ty) (b) of 1997 Wisconsin Act 237 directs the Department to distribute up to \$170,000 each year in state fiscal years 1999 and 2000 to provide up to 10 grants to public or private hospitals to pay for specialized training and on-site consultation and support of medical personnel of neonatal intensive care units in the principles and practice of developmentally supportive and family-centered care for high-risk infants and their families. Section 9122 (3ty) (c) of Act 237 directs the Department to promulgate rules that establish criteria and procedures for awarding grants. The rules are to define "specialized training and on-site consultation and support," which must include a minimum of 40 hours of formal training and 160 hours of practice work.

This order creates ch. HFS 114 relating to distribution of grants to applicant public or private hospitals' neonatal intensive care units to pay for training of staff in the principles and practice of developmentally supportive and family-centered care. The rules include a process by which hospitals may apply for training funds, requirements relating to the training and requirements relating to training center record-keeping and reporting.

Publication Date: January 21, 1999

Effective Date: January 21, 1999

Expiration Date: June 20, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Insurance

1. Rule adopted amending **s. Ins 2.80 (2) (intro.) and (a)**, relating to delaying effective date for NAIC valuation of life insurance policies model regulation, ("XXX"), from January 1, 1999 to July 1, 1999.

Finding of Emergency

Statutory authority: ss. 601.41 (3), 227.24

Statute interpreted: none

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

On December 16, 1997 the Commissioner created **Ins 2.80**, Wis. Adm. Code in order to adopt the 1995 National Association of Insurance Commissioners ("NAIC") valuation of life insurance policies model regulation, or "XXX". This new rule concerning requirements for determining the valuation of reserve liabilities for life insurance policies is currently to take effect on January 1, 1999. Recently the NAIC agreed to consider a revised model regulation and the NAIC is expected to formally approve such a model early in 1999. Wisconsin is the only state that has set January 1, 1999 as an effective date for the 1995 model regulation. This emergency order is necessary to allow time to consider implementation of the revised model regulation once it is adopted by the NAIC.

Publication Date: December 23, 1998

Effective Date: January 1, 1999

Expiration Date: May 31, 1999

Hearing Date: March 12, 1999

[See Notice this Register]

2. Rules adopted amending **s. Ins 3.39 (34)(b)1. and 2., 3.b., and 6.**, relating to guarantee issue eligibility for Medicare Supplement insurance.

Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes clarify the persons eligible who have the right to have policies guaranteed issued. The changes track the recent revisions in the NAIC (National Association of Insurance commissioners) model Medicare Supplement regulations. In order to provide more certainty and provide guarantee issue to the appropriate persons in Wisconsin, it is necessary that the change be put into effect as soon as possible. In addition, other permanent changes to the Medicare Supplement requirements are effective February 1, 1999 and this change effective the same date will allow insurers to modify their policies one time rather than two.

Publication Date: January 28, 1999

Effective Date: February 1, 1999

Expiration Date: July 1, 1999

Hearing Date: March 3, 1999

[See Notice this Register]

EMERGENCY RULES NOW IN EFFECT (4)

Natural Resources

(Fish, Game, etc., Chs. NR 1--)

1. A rule was adopted revising **s. NR 45.10 (3) and (4)**, relating to reservations on state parks, forests and other public lands and waters under the Department's jurisdiction.

Exemption From Finding of Emergency

1997 Wis. Act 27, section 9137 (1) authorizes the department to promulgate these rules without a finding of emergency under s. 227.24, Stats.

Summary of Rules:

1. Creates a process for accepting telephone reservations for department camp sites.
2. Establishes time frame for making reservations.

Publication Date: December 15, 1997

Effective Date: April 1, 1998

Expiration Date: April 1, 1999

Hearing Date: January 12, 1998

2. Rules adopted revising **chs. NR 10 and 11**, relating to deer hunting in Deer Management Unit 67A.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. Deer are causing significant crop damage concerns in this Unit. It is highly unlikely that the regular 1998 gun deer seasons will achieve the prescribed harvest of antlerless deer.

Publication Date: June 24, 1998

Effective Date: October 1, 1998

Expiration Date: February 28, 1999

3. Rules adopted revising **s. NR 20.03 (1)(k)**, relating to sport fishing for yellow perch in Sauk Creek, Ozaukee County.

Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rules are necessary for the immediate

preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is as follows:

The yellow perch population in Lake Michigan is in a state of decline. Harvests of yellow perch must be limited immediately in order to maximize the probability of good reproduction in the future. Lake Michigan yellow perch are attracted by the electric power plant thermal discharge into Sauk creek, an Ozaukee county tributary of Lake Michigan. The sport fishing harvest limits proposed here remove an opportunity for high sport harvests of yellow perch at one location where current regulations do not afford adequate protection for yellow perch. Accordingly, it is necessary to restrict the harvest of yellow perch from Sauk creek by establishing an open season and daily bag limit that coincide with Lake Michigan's.

Publication Date: June 27, 1998
Effective Date: June 27, 1998
Expiration Date: November 24, 1998
Hearing Date: July 24, 1998
Extension Through: January 22, 1999

4. Rules adopted revising s. NR 10.01 (1), relating to the 1998 migratory game bird season.

Finding of Emergency

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until mid–August of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rulemaking procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

Publication Date: September 15, 1998
Effective Date: September 15, 1998
Expiration Date: February 12, 1999
Hearing Date: October 15, 1998

EMERGENCY RULES NOW IN EFFECT (3)

Public Instruction

1. Rules adopted revising ch. PI 35, relating to the Milwaukee parental school choice program.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

On June 10, 1998, the Wisconsin Supreme Court found constitutional the revisions made to the Milwaukee parental choice program under 1995 Wis. Act 27.

Since the provisions under the Act (including allowing the participation of religious schools) are to be implemented during the 1998–99 school year, rules must be in place as soon as possible in order to establish uniform financial accounting standards and financial audit requirements required of the participating private schools as providing for under the Act. The requirements established under this rule were discussed with the private schools

participating under the program during the 1996–97 school year. The schools indicated an acceptance of these provisions.

These emergency rules will be promulgated as proposed permanent rules.

Publication Date: August 5, 1998
Effective Date: August 5, 1998
Expiration Date: January 1, 1999
Hearing Date: October 13, 1998
Extension Through: March 1, 1999

2. Rules adopted creating ch. PI 38, relating to grants for peer review and mentoring.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Under s. 115.405 (2), Stats., the state superintendent shall allocate \$500,000 annually, for one-year grants that allow a participant CESA, consortium of school districts, or a combination thereof to provide assistance and training for teachers who are licensed or have been issued a permit under ss. 115.28 (7) and 115.192, Stats., to implement peer review and mentoring programs.

The grant award period begins the 1998–99 school year, since the timelines would be too stringent to implement this grant program by September 1, 1998, the department is requiring applications to be submitted by November 1, 1998. The grant award period will be from December 1, 1998 to June 30, 1999. In order for applicants to develop proposals and for the state superintendent to review the proposals and make grant awards in time for the upcoming school year, rules must be in place as soon as possible.

Publication Date: August 15, 1998
Effective Date: August 15, 1998
Expiration Date: January 11, 1999
Hearing Date: October 20, 1998
Extension Through: March 11, 1999

3. Rule adopted revising s. PI 3.03 (6) (b) 3., relating to alternate teaching permits.

Finding of Emergency

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

1997 Wis. Act 237, the budget adjustment bill, modified several provisions relating to professional teaching permits. Specifically, an individual who holds a bachelor's degree in engineering, music, art, foreign language, computer science, mathematics or science from an accredited institution of higher education, has at least 5 years of experience as a professional in the subject area in which his or her degree was awarded and demonstrates, to the satisfaction of the state superintendent, competency in that subject area may apply to the state superintendent for enrollment in a 100 hour alternative teacher training program. The state superintendent shall grant a professional teaching permit to any person who satisfactorily completes the alternative teaching program.

Since the provisions under the Act became effective this summer, and alternative teaching programs will be offered in the near future, rules must be in place as soon as possible in order to notify potential applicants of the alternative teaching permit program requirements.

Publication Date: November 1, 1998
Effective Date: November 1, 1998
Expiration Date: March 31, 1999
Hearing Dates: January 4, 5, 6 & 7, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Public Service Commission

1. Rules were adopted amending **s. PSC 4.30 (4) (a) and (5) (a) and (b)**, relating to the preparation of draft environmental impact statements for electric generating plant projects that must be reviewed in 90 days.

Finding of Emergency

The Commission's review of CPCN applications from the winning bidders under 1997 Wis. Act 204, Section 96 (1), will commence when completed applications are filed. This is likely to occur on or before August 31, 1998, at which point state law grants the Commission only 90 days to finish its review of the project applications. Permanent rules cannot be adopted in time to affect the Commission's review period. Preservation of the public peace, health, safety or welfare necessitate putting this rule into effect immediately, so that the Commission can complete its review process in a timely manner.

Publication Date: July 17, 1998
Effective Date: July 17, 1998
Expiration Date: December 14, 1998

2. Rules adopted creating **ch. PSC 187**, relating to Sewer Main Extension: Cost Recovery.

Exemption From Finding of Emergency

Pursuant to the legislature's instruction in s. 66.076 (1) (b), Stats., as created by 1997 Wis. Act 213, and section 5 of that Act, the Public Service Commission is adopting emergency rules, establishing standards for the compensation of subdivision developers when a person outside the subdivision seeks to connect to a sewer system constructed by the developer.

Section 5 (1)(b) of 1997 Wis. Act 213, the legislature specifically exempted the commission from finding of emergency required by s. 227.24, Stats.

Publication Date: November 1, 1998
Effective Date: November 1, 1998
Expiration Date: March 31, 1999
Hearing Date: January 8, 1999

EMERGENCY RULES NOW IN EFFECT (2)

Regulation & Licensing

1. Rules were adopted creating **chs. RL 131 to 135**, relating to the registration and regulation of home inspectors.

Exemption From Finding of Emergency

The Department of Regulation and Licensing finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Section 3 of 1997 Wis. Act 81 states that the department is not required to make a finding of emergency; however, the department offers the following information relating to the promulgation of these rules as emergency rules. The new regulation of home inspectors was created in 1997 Wis. Act 81. The Act was published on April 27, 1998; however, the Act created an effective date for the new regulation as being the first day of the 7th month beginning after publication. That date is November 1, 1998. Nonstatutory provisions in Section 3 of the Act require the department to create

a committee, consisting of 6 home inspectors and 3 public members, to advise the department in promulgating rules. This section also authorizes the department to promulgate rules as emergency rule before November 1, 1998. The advisory committee was formed and met 7 times to developed administrative rules which must be in effect on the effective date of the new regulation.

Publication Date: November 1, 1998
Effective Date: November 1, 1998
Expiration Date: March 31, 1999
Hearing Date: December 17, 1998

2. Rules adopted creating **chs. RL 140 to 142**, relating to the registration of music, art and dance therapists.

Finding of Emergency

The proposed rules interpret the provisions contained in s. 440.03 (14), Stats., as created by 1997 Wis. Act 261, which governs the registration of music, art and dance therapists. Section 440.03 (14)(d), Stats., states that the department shall promulgate rules that specify the services within the scope of practice of music, art and dance therapy that a registrant is qualified to perform. Section 440.03 (14)(d), Stats., gives authority to the department to make investigations and conduct hearings to determine whether a violation of that subsection or any rule promulgated under s. 440.03 (14)(d), Stats., has occurred and to reprimand a person who is registered under par. (a) or deny, limit, suspend or revoke a certification of registration if it finds that an applicant or certificate holder has violated that subsection or any rule promulgated under par. (d). These provisions will become effect on December 1, 1998.

Under the normal rule-making process, the proposed rules would not take effect until the spring of 1999. The department is requesting that this rule be put into effect before 1999 for the following reasons:

(1) The emergency rules will enable the department to adopt application which would be implemented on December 1, 1998.

(2) The emergency rules will enable the department to provide immediate guidance to the various professions regarding their scope of practice.

(3) Without the adoption of the emergency rules, the department will not be able to discipline registrants until the spring of 1999. The emergency rules will enable the department to immediately determine what constitutes grounds for discipline and to take appropriate action based upon that determination.

Publication Date: November 29, 1998
Effective Date: December 1, 1998
Expiration Date: April 30, 1999
Hearing Date: January 12, 1999

EMERGENCY RULES NOW IN EFFECT

Revenue

Rules adopted amending **s. Tax 2.39** and creating **s. Tax 2.395**, relating to the use of an alternative apportionment method.

Finding of Emergency

The Department of Revenue finds that an emergency exists and that a rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Section 2r of 1997 Wis. Act 299 requires that the Department of Revenue prepare administrative rules specifying the procedure for a corporation to request the use of an alternative apportionment methods, the circumstances under which the department may grant such a request and the alternative methods that the department may authorize under s. 71.25 (14), Stats. The allowance of an alternative

apportionment method takes effect for taxable years beginning on January 1, 1998. Corporations must request the use of an alternative methods of apportionment on or before January 1, 2000.

Publication Date: September 29, 1998
Effective Date: September 29, 1998
Expiration Date: February 26, 1999
Hearing Date: December 28, 1998

EMERGENCY RULES NOW IN EFFECT

Veterans Affairs

Rules adopted amending s. VA 2.01 (2) (b)2., relating to the expenditure limitation for dentures under the health care aid grant program.

Finding of Emergency

The Department of Veterans Affairs finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

The Department provides payment to dental providers for dentures under the health care aid grant program for needy veterans and their dependents. Under s. VA 2.01 (2) (b) 2., Wis. Adm. Code., the Department is restricted to a \$50,000 cap per fiscal year for the payment of claims for dentures. As the result of a significant increase in the use of the health care aid grant program for dentures, the Department has received requests for approval of treatment plans involving dentures which would result in expenditures in excess of the fiscal year cap. The Department was required to terminate denture coverage within the first two weeks of the most recent fiscal year. A significant number of applications were returned to veterans who were thus unable to receive coverage for dentures.

The treatment plans submitted with the applications typically encompass the removal of teeth with a resulting need for dentures. Failure to provide dentures could have a negative impact upon an individual's health. It is necessary that the Department has sufficient expenditure authority to meet the significant demand for this health care benefit. The emergency rule cap will accomplish this goal.

Publication Date: October 12, 1998
Effective Date: October 12, 1998
Expiration Date: March 11, 1999
Hearing Date: December 11, 1998

EMERGENCY RULES NOW IN EFFECT (2)

Workforce Development

(Economic Support, Chs. DWD 11–59)

1. Rules adopted renumbering ss. HFS 55.55 to 55.62 and revising ch. DWD 55, relating to background checks for persons involved with certified day care.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Beginning on October 1, 1998, recently enacted provision in ch. 48, Stats., require the completion of background reviews on

caregivers and others who come into contact with clients in the programs operated by caregivers. Although most of these provisions are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999

2. Rules adopted renumbering chs. HSS 80 to 82 as chs. DWD 40 to 42, and creating ch. DWD 43, relating to child support administrative enforcement.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

State and federal legislation have created new procedures for the administrative enforcement of child support obligations. To place the new procedures into effect, the Department of Workforce Development has scheduled public hearings on a proposed permanent rule during the month of October, 1998. While the permanent rulemaking process proceeds, DWD is adopting the provisions in the current draft as an emergency rule so that county child support agencies will be able to utilize the new statutory enforcement and collection procedures for the benefit of custodial parents as soon as possible.

Publication Date: October 1, 1998
Effective Date: October 1, 1998
Expiration Date: February 28, 1999

EMERGENCY RULES NOW IN EFFECT

Workforce Development

(Prevailing Wage Rates, Chs. DWD 290–294)

Rules adopted amending s. DWD 290.155, relating to the annual adjustment of the minimum estimated project costs for the application of the requirement to obtain a determination of prevailing wage rates for workers employed on state or local public works projects.

Finding of Emergency

The Department of Workforce Development finds that an emergency exists and a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

The Department of Workforce Development, acting under its statutory authority to adjust threshold limits in accordance with changes in construction costs, has determined that the increase in construction costs between November 1997 and December 1998 requires that the threshold limits for prevailing wage rate determinations be raised from \$32,000 to \$33,000 for single-trade projects and from \$160,000 to \$164,000 for multi-trade projects.

If these new threshold limits are not put into effect by an emergency rule, the old limits will remain in effect for approximately six months, until the conclusion of the regular rulemaking process. The practical effect of this would be that, between now and 7/1/99, a single-trade project costing more than \$32,000 but less than \$33,000, or a multi-trade project costing more

than \$160,000 but less than \$164,000, would not be exempt from the requirement to get a prevailing wage rate determination. A local unit of government or state agency proceeding with a public works project in this cost range during this period would incur the added complication of complying with the state prevailing wage laws, despite the fact that the threshold limit adjustment is based on national construction cost statistics and is very unlikely to be changed by the regular rulemaking process. The Department is

proceeding with this emergency rule to avoid imposing this additional administrative burden on local governments and state agencies.

Publication Date: January 4, 1999
Effective Date: January 4, 1999
Expiration Date: June 3, 1999
Hearing Date: February 11, 1999

STATEMENTS OF SCOPE OF PROPOSED RULES

Administration

Subject:

Adm Code – Relating to creating rules relating to electronic records.

Description of the objective of the proposed rule:

1995 Wis. Act 27 amended the State Public Records optical disk storage requirement under s. 16.611, Stats., to include electronic storage. The objective of the proposed rule is to ensure that the quality of public records in electronic format is maintained and that public records in electronic format remain accessible for their designated retention period.

Statement of the statutory authority for the rule:

Sections 16.611, 16.612, and 227.11 (2) (a), Stats.

Staff time required:

The Department estimates that state employees will spend 1600 hours to develop this rule.

Agriculture, Trade and Consumer Protection

Subject:

Ch. ATPC 30 – Relating to pesticide product restrictions; atrazine pesticides.

Description of policy issues:

Preliminary objectives:

Regulate the use of atrazine pesticides to protect groundwater and assure compliance with Wisconsin's Groundwater Law. Update current rule to reflect groundwater sampling results obtained during the past year. Renumber and reorganize current rule, as necessary.

Preliminary policy analysis:

Under the Wisconsin Groundwater Law, ch. 160, Stats., the Department must regulate the use of pesticides to assure compliance with groundwater standards established by the Department of Natural Resources under ch. NR 140, Wis. Adm. Code. DNR has established a groundwater enforcement standard of 3 µg/liter for atrazine and its chlorinated metabolites.

Under s. 160.25, Stats., the Department must prohibit atrazine uses that result in groundwater contamination levels which violate the DNR enforcement standard. The Department must prohibit atrazine use in the area where the groundwater contamination has occurred unless the Department determines to a reasonable certainty, based on the greater weight of credible evidence, that alternative measures will achieve compliance with the DNR enforcement standard.

Current rules under ch. ATPC 30 prohibit the use of atrazine in 98 designated areas (approximately 1,200,000 acres), including large portions of the Lower Wisconsin River Valley, Dane County and Columbia County. The current rules also restrict atrazine use rates and handling practices on a statewide basis. The statewide restrictions are designed to minimize the potential for groundwater contamination, as required under s. 160.25, Stats.

Over the next year, the Department may identify additional wells containing atrazine and its chlorinated metabolites at and above the current DNR enforcement standard. In order to comply with the Groundwater Law, the Department must take further action to prohibit or regulate atrazine use in the areas where these wells are located. The Department proposes to amend ch. ATPC 30 to add or repeal prohibition areas or take other appropriate regulatory action in response to any new groundwater findings.

Policy alternatives:

No Change. If the Department takes no action on this proposed rulemaking, the Board approved final draft of the ch. ATPC 30 atrazine rule (to be promulgated in April, 1999) will apply. However, the Department would take no new regulatory action in response to new groundwater findings obtained this year. This would not adequately protect groundwater in the newly-discovered contaminated areas, nor would it meet the Department's obligations under the Groundwater Law. Conversely, the Department would be unable to repeal the current restrictions on atrazine use where indicated by groundwater findings.

Statutory authority:

The Department proposes to revise ch. ATPC 30, Wis. Adm. Code, under authority of ss. 93.07, 94.69, and 160.19 through 160.25, Stats.

Staff time required:

The Department estimates that it will use approximately 0.6 FTE (Full-Time Equivalent) staff to develop this rule. This includes investigation, drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. The Department will use existing staff to develop this rule.

Agriculture, Trade and Consumer Protection

Subject:

Ch. ATPC 105 – Relating to motor vehicle fuel sales below cost.

Description of policy issues:

Preliminary objectives:

Revise current rules prohibiting "sales below cost." The rule changes will define how the "selling price" of motor vehicle fuels is determined.

Preliminary policy analysis:

Section 100.30, Stats. currently prohibits sales below "cost" as defined in the law. This law has been in effect since 1939 and is also known as "The Unfair Sales Act."

The basic provision of the Unfair Sales Act is a prohibition against selling products at a price that is below cost. The term "cost" is extensively defined in both the statute and the current version of ch. ATPC 105. However, the terms of both retail and wholesale sales have been getting progressively more complicated. The proposed rule would further define the "price" that a seller charges for Unfair Sales Act purposes.

The proposed rule would not attempt to regulate what types of pricing strategies retailers and wholesalers could or could not use. Instead, the rule would specify how discounts and rebates, such as preferred payment method incentives, affect the net selling price to the customer. This would make it easier for the Department, consumers, competitors and courts to determine whether a price violates the Unfair Sales Act.

The need to define selling price arose from 1997 Wis. Act 55. That act modified the Unfair Sales Act to give competing motor vehicle fuel sellers a private right of action for damages. Previous to Act 55, the Department initiated all enforcement actions. The Department could determine, on its own, a seller's price and cost and compare the two numbers and determine whether or not a violation occurred.

Now, however, enforcement actions can be brought by various parties. Therefore, it is very important for competitors, consumers and courts to agree on what constitutes a violation of the Unfair Sales Act. An administrative rule defining how discounts and rebates would affect the selling price under the Unfair Sales Act would be very useful for this purpose.

Policy alternatives:

- **No Change.** If the Department does not proceed with rule changes, the current rules will remain in effect. However, businesses would face continued uncertainty over whether or not their pricing practices, and their competitors' practices, may be in a violation of the Unfair Sales Act.

- **Proceed with rule change.** This would provide clarity as to what types of rebate programs would comply with the Unfair Sales Act.

Statutory authority:

The Department proposes to amend ch. ATP 105 under authority of s. 97.07 (1), Stats.

Staff time required:

The Department estimates that it will use approximately 1.0 FTE (Full-Time Equivalent) staff to develop this rule. This includes investigation, drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. The Department will use existing staff to develop this rule.

Financial Institutions (Division of Banking)

Subject:

Ch. DFI-Bkg 4 – Relating to deposits in other financial institutions.

Description of policy issues:*Description of the objective of the rule:*

The objective is to repeal ch. DFI-Bkg 4.

Description of existing relevant policies and new policies proposed to be included in the rule and an analysis of policy alternatives:

Ch. DFI-Bkg 4 limits the amount state-chartered banks may invest in time deposits and certificates of deposit of other financial institutions. In each domestic insured United States bank and insured savings & loan or credit union, the amount is limited to 20% of capital and surplus. In domestic insured financial institutions, the amount is limited to 50% of capital and surplus. In each uninsured bank or foreign bank, and in any other savings & loan or credit union, the amount is limited to 20% of capital and surplus.

1995 Wis. Act 336 was enacted May 2, 1996 and became effective July 1, 1996. This act repealed and recreated ch. 221, Stats. This represents a total modernization and streamlining of Wisconsin's banking statutes. 1995 Wis. Act 336 incorporated the provisions of ch. DFI-Bkg 4 into recreated ch. 221, Stats., under s. 221.0320 (6), Stats.

Statutory authority for the rule:

SS. 220.02 (2) and 227.11 (2), Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

Estimated amount of time state employees will spend to develop the rule – 40 hours. No other resources are necessary.

Financial Institutions (Division of Banking)

Subject:

Ch. DFI-Bkg 6 – Relating to investment in bonds issued by international bank for reconstruction and development, the inter-American development bank, and foreign governments.

Description of policy issues:*Description of the objective of the rule:*

The objective is to repeal ch. DFI-Bkg 6.

Description of existing relevant policies and new policies proposed to be included in the rule and an analysis of policy alternatives:

Ch. DFI-Bkg 6 limits the aggregate amount a state bank, trust company bank or mutual savings bank may invest in bonds or any other security issued by the international bank for reconstruction and development or the inter-American development bank to 10% of its capital and surplus of such bank. Ch. DFI-Bkg 6 limits the aggregate amount a state bank, trust company bank or mutual savings bank may invest in general obligation bonds issued by any foreign national government provided such bonds are payable in American funds to 3% of the capital and surplus of such bank. Ch. DFI-Bkg 6 does not apply to bonds and securities of the Canadian government and Canadian provinces, which are payable in American funds.

1995 Wis. Act 336 was enacted May 2, 1996 and became effective July 1, 1996. This act repealed and recreated ch. 221, Stats. This represents a total modernization and streamlining of Wisconsin's banking statutes. 1995 Wis. Act 336 incorporated the provisions of ch. DFI-Bkg 6 into recreated ch. 221, Stats., under s. 221.0320 (4) and (5), Stats.

Statutory authority for the rule:

SS. 220.02 (2) and 227.11 (2), Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

Estimated amount of time state employees will spend to develop the rule – 40 hours. No other resources are necessary.

Financial Institutions (Division of Banking)

Subject:

Ch. DFI-Bkg 7 – Relating to real estate mortgage loans.

Description of policy issues:*Description of the objective of the rule:*

The objective is to repeal ch. DFI-Bkg 7.

Description of existing relevant policies and new policies proposed to be included in the rule and an analysis of policy alternatives:

Ch. DFI-Bkg 7 provides a definition for real estate mortgage loans and also establishes the documentation that a state-chartered bank must obtain for each real estate mortgage loan that it makes.

It is the intention to repeal ch. DFI-Bkg 7 in its entirety. State-chartered banks compete with other financial institutions and non-financial institution lenders for real estate mortgage loans. The Office of Comptroller of the Currency ("OCC") regulates national banks. The OCC has no regulations regarding the required documentation of real estate mortgage loans. Likewise, no regulator establishes documentation requirements for non-financial institution lenders.

In addition to real estate mortgage loans, state-chartered banks make commercial loans, installment loans, agricultural loans, and other types of loans. There are no regulations establishing documentation requirements for these other categories of loans.

A one-size-fits-all approach to the documentation of real estate mortgage loans does not recognize the variety of real estate mortgage loan products available in the market, and does not allow state-chartered banks to compete on a level playing field with other lenders. Examiners of the Division of Banking will review that proper documentation is maintained for real estate mortgages loans, in accordance with the principles of safety and soundness, in the same manner that they do for other categories of loans.

Statutory authority for the rule:

SS. 220.02 (2) and 227.11 (2), Stats.

Estimate of the amount of time state employees will spend to develop the rule and other resources necessary to develop the rule:

Estimated amount of time state employees will spend to develop the rule – 40 hours. No other resources are necessary.

Natural Resources

Subject:

Ch. NR 10 – Relating to the establishment of the 1999 migratory game bird hunting seasons.

Description of policy issues:

Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:

The rule changes the basic migratory game bird hunting season rules to comply with changes required by the U.S. Fish and Wildlife Service and suggested by the public during the hearing process.

This action does not represent a change from past policy.

Statutory authority:

SS. 29.014, 29.041 and 227.11, Stats.

Anticipated time commitment:

The anticipated time commitment is 72 hours. Three public hearings will be held during August, 1999 in the Northern Wisconsin, LaCrosse and Milwaukee areas.

Revenue

Subject:

S. Tax 11.05 – Relating to governmental units;

S. Tax 11.87 – Relating to meals, food, food products and beverages; and

S. Tax 11.94 – Relating to Wisconsin sales and transportation charges.

Description of policy issues:

Objective of the proposed rule:

The objectives of the proposed rule are to:

- Reflect statutory changes.
- Clarify various provisions and provide more complete information.
- Reflect the creation of a multipurpose exemption certificate.
- Update format and style in conformity with Legislative Council Rules Clearinghouse standards.

Policy analysis:

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect law changes and court decisions. If the rules are not changed, they will be incorrect in that they will not reflect current law or current Department policy.

Statutory authority:

S. 227.11 (2) (a), Stats.

Estimate of staff time required:

The Department estimates it will take approximately 60 hours to develop the rule order.

Revenue

Subject:

S. Tax 11.51 – Relating to Wisconsin sales and use tax treatment of sales made by grocers.

Description of policy issues:

Objectives of the proposed rule:

The objectives of the proposed rule are to:

- Add additional products to the listings of taxable and exempt products.
- Reflect the necessary changes due to the creation of ss. 77.51 (4) (cm) and 77.54 (20) (bg) 1. and 2., Stats., by 1997 Wis. Act 237.
- Clarify the Wisconsin sales and use tax treatment of pure fruit juices.

Policy analysis:

Existing policies are as set forth in the rule, except that the sales and use tax treatment of pure fruit juices as described in the rule does not reflect current Department policy. The rule is being changed to reflect current Department policy, but no new policies are being proposed.

If the rule is not changed, it will be incorrect regarding the sales and use tax treatment of fruit juices, and it will be incomplete regarding the sales and use tax treatment of meals, sandwiches and prepackaged foods.

Statutory authority:

S. 227.11 (2) (a), Stats.

Estimate of staff time required:

The Department estimates it will take approximately 50 hours to develop this rule order.

Revenue

Subject:

S. Tax 11.66 – Relating to communication services.

Description of policy issues:

Objective of the proposed rule:

The objectives of the proposed rule are to:

- Reflect statutory changes.
- Clarify that the rule applies to communication services in general, and list the 3 types of communication services to which the rule applies.
- Provide a definition of “cable television system” and list cable television system services separately from telecommunications services.
- List additional taxable telecommunications services, to reflect technological advances.
- Update grammar and style in conformity with Legislative Council Rules Clearinghouse standards.

Policy analysis:

Existing policies are as set forth in the rules. No new policies are being proposed, other than to reflect law changes. If the rules are not changed, they will be incorrect in that they will not reflect current law or current Department policy.

Statutory authority:

S. 227.11 (2) (a), Stats.

Estimate of staff time required:

The Department estimates it will take approximately 40 hours to develop the rule order.

Transportation

Subject:

Ch. Trans 213 – Relating to the local bridge improvement assistance program.

Description of policy issues:

Description of the objective of the rule:

This rulemaking will amend ch. Trans 213, relating to the Local Bridge Improvement Assistance Program. It will consider modifying the current Wisconsin requirement for replacement of eligible structures under the program from sufficiency rating of less than 40, to the federal standard of less than 50. The update will also address any discrepancies between federal requirements and the current rule.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

The federal bridge program was created in 1979, with state funds first approved in the 1983–1985 biennium. When the program was initiated, Wisconsin had a significant number of deficient local structures. The Local Bridge Improvement Assistance Program was

designed with stringent requirements exceeding even those of the federal government, in a true attempt to address the very worst of Wisconsin's problems.

Since then, over 2,169 bridges have been replaced under the program, at a total cost of well over \$411 million. In 1979, 1,677 structures were eligible for replacement. In 1998, that number was 680 (a net gain of 997 bridges).

Analysis:

The issues this rule-making will address include:

1) New Criteria. It is timely and appropriate to make ch. Trans 213 consistent with the state bridge program, and federal rules. The change from sufficiency rating of less than 40 for replacement to less than 50 will make an additional 429 structures statewide immediately eligible for replacement.

2) New Eligibility. Since the rule was originally written, federal rules have changed, making items such as scour eligible for reimbursement. This amendment will enable locals to take advantage of new items.

3) New Definitions. Several references to WisDOT organization and federal resources are outdated. These will be corrected, and any new items defined.

Statutory authority for the rule:

SS. 84.18 and 85.16, Stats.

Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

An estimate of state employee time would be a total of several weeks (drafting, meetings with local officials and counties, and holding public hearings.)

Transportation

Subject:

Ch. Trans 276 – Relating to establishing a network of highways on which long combination vehicles may operate, by adding three highway segments to the network.

Description of policy issues:

Description of the objective of the rule:

This proposal will amend ch. Trans 276, which establishes a network of highways on which long combination vehicles may operate, by adding three highway segments to the network. The actual segments being proposed are State Trunk Highway 182 from STH 13 in Park Falls to STH 47 in Manitowish, State Trunk Highway 80 from USH 14 in Richland Center to STH 33 in Union Center and State Trunk Highway 46 from STH 64 South of Deer Park to USH 8 North of Amery.

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:

Federal law requires the Department of Transportation to react within 90 days to requests for changes to the long truck route network. Wisconsin state law requires that the Department use the administrative rule process to deal with changes to the long truck route network. Chapter Trans 276 is an existing rule set up for long truck routes. The Department has received a written request for one of the above highway segments from the Wisconsin Motor Carriers Association on behalf of Roehl Transport, and from Fuchs, Inc., for the other two segments.

Statutory authority for the rule:

S. 348.07 (4), Stats.

Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

It is estimated that state employees will spend 40 hours on the rule-making process, including research, drafting and conducting a public hearing.

SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE

Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse

Please check the Bulletin of Proceedings for further information on a particular rule.

Corrections

Rule Submittal Date

Notice is hereby given that pursuant to s. 227.14 (4m), Stats., on January 29, 1999, the Department of Corrections submitted a proposed rule to the Legislative Council Staff.

Analysis

The proposed ch. DOC 330, Wis. Adm. Code, relates to the pharmacological treatment of serious child sex offenders.

Agency Procedure for Promulgation

Public hearing is required under s. 227.16 (1), Stats., and three public hearings will be held on March 1, 2 and 3, 1999 at Madison, Wisconsin Rapids and Waukesha, respectively, (not all three each day). The organization unit that is primarily responsible for the promulgation of the rule is the Office of Offender Programs.

Contact Information

Robert G. Pultz
Assistant Legal Counsel
Telephone (608) 267–0922

Dentistry Examining Board

Rule Submittal Date

On February 1, 1999, the Dentistry Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 447.02 (2) (e), Stats., as created by 1997 Wis. Act 96.

The proposed rule-making order creates ch. DE 7, relating to the education required of licensed dental hygienists to receive a certificate to administer local anesthesia to patients.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 3, 1999 in Room 179A at 1400 East Washington Ave., Madison, Wisconsin.

Contact Information

Pamela Haack
Administrative Rules Coordinator
Telephone (608) 266–0495

Financial Institutions

Rule Submittal Date

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on January 26, 1999 the Wisconsin Department of Financial Institutions submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order amends in part and repeals in part ch. RL 41.

The subject matter of the proposed rule is as follows—

This proposed rule sets forth:

- The registration and renewal of registration fees for mortgage bankers, loan originators and mortgage brokers;
- The transfer fee for loan originators; and
- The registration periods for all registrations and renewals of registrations.

Agency Procedure for Promulgation

A hearing on the proposed rule is required. The public hearing is scheduled for March 3, 1999 at the Tommy G. Thompson Conference Room, 5th Floor, Department of Financial Institutions, 345 West Washington Avenue in Madison. The organizational unit within the Department of Financial Institutions that is primarily responsible for the promulgation of the rule is the Division of Banking.

Contact Information

If you have questions regarding this rule, you may contact:

Michael J. Mach
Administrator
Telephone (608) 266–0451

Funeral Directors Examining Board

Rule Submittal Date

On January 20, 1999, the Funeral Directors Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: ss. 15.08 (5) (b), 227.11 (2), 445.03 (2) (a) and 445.124 (3m) (j) 2., Stats.

The proposed rule-making order relates to the solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy.

Agency Procedure for Promulgation

A public hearing is required and will be held on March 16, 1999 at 10:00 a.m. in Room 291 at 1400 East Washington Ave., Madison.

Contact Information

Pamela Haack
Administrative Rules Coordinator
Telephone (608) 266–0495

Health and Family Services

Rule Submittal Date

Notice is hereby given that on January 15, 1999 the Wisconsin Department of Health and Family Services submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: s. 149.143 (2) (a) 2., 3. and 4. and (3), Stats., as affected by 1997 Wis. Act 27

The proposed rule order affects ss. HFS 119.07 (6) and 119.15, relating to the operation of the Health Insurance Risk-Sharing Plan (HIRSP).

Reason for rules, intended effects, requirements:

This order amends the rules for operation of the Health Insurance Risk-Sharing Plan (HIRSP) that are being repealed and recreated effective February 1, 1999. The amendments are in effect by emergency order. This is the replacement permanent order.

This order amends two sections of the HIRSP program rules to adjust rates for HIRSP supplemental coverage for persons eligible for Medicare and to adjust the total HIRSP insurer assessments and provider payment rates. Chapter 149, Stats., as affected by 1997 Wis. Act 27, requires the Department to adjust HIRSP premium rates by rule, as well as the total HIRSP insurer assessments and the provider payment rates. The Department does this after consulting with the HIRSP Board of Governors.

Agency Procedure for Promulgation

Public hearing under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Contact Information

If you have questions regarding this rule, you may contact:

Kathy Rogers
Division of Health Care Financing
Telephone (608) 264-7733

or

Randy McElhose
Division of Health Care Financing
Telephone (608) 267-7127

Health and Family Services**Rule Submittal Date**

Notice is hereby given that on January 21, 1999 the Wisconsin Department of Health and Family Services submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

Statutory authority: s. 46.295 (6), Stats.

The proposed rule order affects ch. HFS 77, relating to interpreting services for persons who are deaf or hard of hearing.

Reason for rules, intended effects, requirements:

This is a revision of current rules that establish criteria and procedures for reimbursement of interpreters for providing sign language and other interpreting services for persons who are deaf or hard-of-hearing. Section 46.295 (6), Stats., directs the Department to promulgate rules to implement s. 46.295, Stats. The original rules were promulgated in 1989. This is the first time they have been amended.

The major changes in the rules are:

- 1) To refer throughout to "deaf or hard of hearing persons" rather than "hearing impaired persons," and to "interpreting services" rather than "interpreter services";
- 2) To state that the individual or organization requesting interpreter services will be provided with a registry of qualified interpreters from which to select and schedule an interpreter instead of the Department doing the scheduling; and
- 3) To add to the registry interpreters whose qualifications have been certified and verified by the Wisconsin Interpreting and Transliterating Assessment (WITA).

Agency Procedure for Promulgation

Public hearing under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

Contact Information

If you have questions regarding this rule, you may contact:

Joan Sanzen
Division of Supportive Living
Telephone (608) 243-5627

Insurance, Commissioner of**Rule Submittal Date**

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on January 29, 1999.

Analysis

These changes will affect s. Ins 2.80, Wis. Adm. Code, relating to valuation of life policies model regulation.

Agency Procedure for Promulgation

The date for the public hearing is March 12, 1999. The hearing will be held in Room 23 at OCI, 121 East Wilson Street, Madison.

Contact Information

To obtain a copy of the proposed rule, contact:

Tammi Kuhl
OCI Central Files
Telephone (608) 266-0110

For additional information, please contact:

Stephen Mueller
OCI Legal Unit
Telephone (608) 267-2833
or e-mail at smueller@mail.state.wi.us

Insurance, Commissioner of**Rule Submittal Date**

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance is submitting a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse on January 28, 1999.

Analysis

These changes will affect s. Ins 3.39 (34) (b) 1. and 2., 3. b. and 6., Wis. Adm. Code, relating to guarantee issue eligibility for Medicare Supplement insurance.

Agency Procedure for Promulgation

The date for the public hearing is March 3, 1999 at Room 6, OCI at 121 East Wilson Street, Madison.

Contact Information

To obtain a copy of the proposed rule, contact:

Tammi Kuhl
OCI Central Files
Telephone (608) 266-0110

For additional information, please contact:

Robert Luck
OCI Legal Unit
Telephone (608) 266-0082
E-mail at rluck@mail.state.wi.us

Revenue***Rule Submittal Date***

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on January 26, 1999 the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

Analysis

The proposed rule order amends ss. Tax 11.14 and 11.53, relating to sales and use tax exemption certificates and the sales and use tax treatment of temporary events.

Agency Procedure for Promulgation

The Department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The Office of the Secretary is primarily responsible for the promulgation of the rule order.

Contact Information

If you have questions regarding this rule, you may contact:

Mark Wipperfurth
Income, Sales, and Excise Tax Division
Telephone (608) 266–8253

NOTICE SECTION

Notice of Hearing *Agriculture, Trade and Consumer Protection*

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on proposed rules (proposed chs. ATCP 29 and 40, Wis. Adm. Code) relating to agricultural chemical cleanup surcharge fees.

Hearing Information

The hearing will be held on:

March 1, 1999	Board Room
Monday	DATCP
1:00 p.m. – 4:00 p.m.	2811 Agriculture Dr.
6:00 p.m. – 8:00 p.m.	MADISON, WI

Written Comments

The public is invited to attend the hearing and comment on the proposed rule. The Department also invites comments on the regulatory flexibility analysis that accompanies the rule. Following the public hearing, the hearing record will remain open until **March 9, 1999**, for additional written comments.

Copies of Rule

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Agricultural Resource Management Division, 2811 Agriculture Drive, Box 8911, Madison, WI 53708–8911, or by calling 608/224–4523. Copies will also be available at the public hearing.

An interpreter for the hearing–impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by **February 24, 1999**, either by writing to Karen Ayers, 2811 Agriculture Drive, Box 8911, Madison, WI 53708–8911, or by contacting the message relay system (TTY) at 608/224–5058. Handicap access is available at the hearing.

Analysis by the Dept. of Agriculture, Trade & Consumer Protection

Statutory authority: ss. 93.07 (1) and 94.73 (15), Stats.

Statutes interpreted: ss. 94.64, 94.681, 94.685, 94.703, 94.704 and 94.73, Stats.

This rule extends, for 2 more years, a moratorium on agricultural chemical license fee surcharges used to fund the Department's agricultural chemical cleanup program. The cleanup fund is currently running a substantial surplus. The moratorium applies to license fee surcharges paid by pesticide manufacturers, pesticide dealers and pesticide commercial applicators. It also applies to license and tonnage fee surcharges paid by fertilizer manufacturers.

Under s. 94.73 (15), Stats., the Department must adjust license fee surcharges to maintain a cleanup fund balance (at the end of each fiscal year) of at least \$2,000,000 but not more than \$5,000,000. The cleanup fund balance currently exceeds the \$5,000,000 maximum target level. In order to remedy the current surplus, the Legislature suspended surcharge collections for 2 years.

The Department projects that the cleanup fund balance will remain above the \$5,000,000 maximum target level even after the legislatively–imposed surcharge moratorium expires. Based on projections of a continuing surplus, this rule extends the surcharge moratorium for an additional 2 years. When the moratorium expires, surcharges will again take effect at previously established levels. Moratorium expiration dates vary, depending on current fee collection effective dates and annual licensing cycles.

This rule incorporates, without change, current fertilizer license and tonnage fees established by statute, except that this rule extends for 2 years the current statutory moratoriums on fertilizer license and tonnage fee surcharges used to fund the agricultural chemical cleanup fund.

Fiscal Estimate

This fee rule adjusts revenues to the agricultural chemical cleanup fund as needed to maintain a balance in the fund that is between \$2,000,000 and \$5,000,000, as required by s. 94.73 (15), Stats. The fund is currently well above the \$5 million cap and anticipated reimbursements are not expected to bring the balance below \$5 million before the surcharge fees are set to resume in FY 99/00 (Fiscal Year 1999/2000).

Anticipated expenditures are based off an estimated \$7.3 million in unsubmitted reimbursement costs incurred prior to July, 1988, that must be submitted by October 14, 2000 to be eligible for reimbursement. Responsible persons are continuing to expend \$3.6 million per year. The Department has assumed that the \$7.3 million in existing costs will be submitted uniformly over the next two years, and that ongoing costs will be submitted as incurred with these existing costs, as required by rule to maintain their eligibility.

Based on these assumptions, the Department estimates that a two year extension on the surcharge fee “holiday” will drop the agricultural chemical cleanup fund balance to approximately \$4.6 million at the end of FY 01/02 (Fiscal Year 2001/2002), after which the surcharge fee could be set based on continuing reimbursement program costs.

Initial Regulatory Flexibility Analysis

The proposed changes to chs. ATCP 29 and ATCP 40, Wis. Adm. Code, will have minor but positive effects on small businesses that sell or use fertilizers or pesticides in Wisconsin.

Businesses Affected:

Currently all manufacturers and labelers of pesticides used in agricultural crop production must register those pesticides and pay certain fees for those pesticides, with the fees based on the value of Wisconsin sales. Likewise, manufacturers and labelers of fertilizers must be licensed and pay fees for each ton of fertilizer distributed in this state. Agricultural co-ops and farm centers that blend fertilizer or sell or apply pesticides must be licensed to do these activities. A portion of these fees are used to clean up sites that have been contaminated by spills of pesticides and fertilizers. Most of these fees are passed to farmers through distributor imposed surcharges on the products.

Starting with the state fiscal year 1998/1999, and continuing for two years, the product and license fees have been reduced because the balance of funds currently available exceeds the anticipated costs of cleaning up contaminated sites. The fees are set to resume during state fiscal year 2000/2001. This proposed rule will delay resumption of these surcharge fees for agricultural chemical cleanups for two additional years.

Most manufacturers of pesticides and many manufacturers of fertilizers, as well as many agricultural co-ops and farm centers are not small businesses. Some smaller co-ops and farm centers are small businesses. Since most of these fees are passed on to farmers, the greatest savings should be at the farm level, most of which are small businesses.

Anticipated Impacts:

The Department estimates cost savings of \$3,265,000 per year for two years. Based on 30,000 farms, the Department anticipates average per farm savings of about \$200 over the two years during which this rule extends the fee reduction, with the savings directly proportional to purchased fertilizer and pesticide inputs.

There are no anticipated changes in recordkeeping, reporting, or other practices as a result of this rule.

Notice of Hearing

Commerce

(Flammable and Combustible Liquids

Ch. ILHR 10)

Notice is hereby given that pursuant to ss. 101.09, 101.142, and 101.144, Stats., the Department of Commerce announces it will hold public hearings on proposed rules and current emergency rules relating to Flammable and Combustible Liquids.

Hearing Information

March 3, 1999	Third Floor
Wednesday	Conference Room 3B
Commencing at 9:30 a.m.	201 W. Washington Ave.
	Madison

Interested persons are invited to appear at the hearings and present comments on the proposed and emergency rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this rulemaking will remain open until **March 17, 1999**, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or TTY at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

A copy of the proposed rules may be obtained without cost from Diane Ploessl, Department of Commerce, P.O. Box 7838, Madison, Wisconsin 53707, telephone (608) 261-7726, or (608) 264-8777 (TTY). Copies will also be available at the public hearings.

Analysis of Proposed Rules

Statutory Authority: ss. 101.09, 101.142, and 101.144

Statutes Interpreted: ss. 101.09, 101.142, and 101.144

Under sections 101.09, 101.142, and 101.144, Wisconsin Statutes, the Department protects public health, safety, welfare, and the environment by promulgating rules for and administering the regulation of petroleum product storage tank systems and the storage and handling of flammable and combustible liquids. The purpose of the regulatory effort is to guarantee that storage tank systems and their contents are managed in a manner that is protective of life safety and the environment.

On December 22, 1998, a ten-year upgrade period came to an end, and all underground tank systems falling under the United States Environmental Protection Agency's rules are now required to have been upgraded to include adequate protection against corrosion, leaks, spills, and overfills. Under the proposed rule, the Department and its contracted agents will conduct inspections to ensure that tank systems which are not in compliance have been shut down in accordance with state and federal rules. In those instances where owners or operators have not complied with the upgrade or shutdown requirements, immediate action will be taken to either prevent the tank systems from continuing to be used or to prevent the delivery of additional petroleum product to the systems.

The shut down of noncomplying tank systems is a core environmental and financial issue. The tank systems that are not in compliance pose a continuing high-risk threat to the environment, and delay in action will continue an unnecessary environmental hazard. Additionally, new releases from these non-upgraded tank systems will add to the financial burden of the PECFA program, which is significantly over-subscribed. The rule included with this order is in response to environmental issues associated with non-upgraded tank systems.

Text of Rule

SECTION 1. ILHR 10.18 (3) (intro) is amended to read:

ILHR 10.18 (3) **SYSTEM SHUTDOWN.** Persons with enforcement authority under this chapter shall have the authority to shut down tank systems or components of tank systems ~~via the issuance of orders and disabling of the system with locks~~ under the following conditions:

SECTION 2. ILHR 10.18 (3) (d) is created to read:

ILHR 10.18 (3) (d) *Immediate shutdown because of upgrade standards violation.* Tank systems that do not comply with the provisions of either s. ILHR 10.51 or 10.52 after December 22, 1998, shall be subject to immediate shutdown.

SECTION 3. ILHR 10.48 is created to read:

ILHR 10.48 Product delivery to tank systems. It shall be a violation of this code for any person to deliver or place a flammable or combustible liquid into a tank system that has been shut down by an enforcement action under s. ILHR 10.18.

Initial Regulatory Flexibility Analysis

1. Types of small businesses that will be affected by the rules.

The rule will impact small businesses that have petroleum product storage tank systems for vehicle fueling. This will include both sites that are retailing the product and those that are using it only for their own vehicles.

2. Reporting, bookkeeping and other procedures required for compliance with the rules.

The provisions of the rule will not create any new record keeping or procedures for owners or operators of covered petroleum product storage tank systems.

3. Types of professional skills necessary for compliance with the rules.

The rules will not require any professional skills for compliance.

Fiscal Estimate

Very few enforcement actions are expected to result from the proposed rules, because the rules are being implemented after a ten-year upgrade period that the United States Environmental Protection Agency established for obtaining compliance with the associated construction standards.

Notice of Hearings

Department of Corrections

Notice is hereby given that pursuant to ss. 227.11 (2) (a), 227.17, and 973.10, Stats., that the Department of Corrections will hold hearings pursuant to the proposed administrative rule revising s. DOC 328.21 and ch. DOC 330, relating to the search and seizure of probation and parole offenders. These hearings relate to the proposed permanent rule and the emergency rule now in effect and published on December 3, 1998.

Hearing Information

March 1, 1999	Room #041
Monday	GEF III Bldg.
2:00 p.m. -	125 South Webster St.
3:00 p.m.	MADISON, WI

March 3, 1999
Wednesday
12:00 p.m. (noon) –
1:00 p.m.

Rm. 137A
State Office Bldg.
141 N.W. Barstow St.
WAUKESHA, WI

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Dept. of Corrections

The current administrative rule, s. DOC 328.21 (3) and (7), allows the Department of Corrections to search an offender's residence for contraband. The proposed amended rule will enlarge this authority and allow the Department to search an offender's residence for an offender as well as contraband. The rule is pursuant to a legislative enactment that provided funding for the Department of Corrections to create an absconder unit in southeastern Wisconsin. The rule will make community supervision more meaningful and promote accountability among offenders by allowing the Department of Corrections to search the residences of offenders who are not in compliance with the rules of supervision.

Initial Regulatory Flexibility Analysis

Notice is hereby given that pursuant to s. 227.114, Stats., it is not anticipated that the emergency or permanent rule will have an economic impact on small businesses.

Fiscal Estimate

These rules implement search and seizure policy relating to probation and parole offenders. The intent of the Department in promulgating these rules is to comply with the legislative enactment directing the Department to address the problem of probation and parole absconders.

These administrative rules should not have a Departmental fiscal effect separate from the statutory effect.

Contact Information

To obtain a copy of either the emergency or permanent rule or for more information concerning the hearings, write or phone:

Robert G. Pultz
Telephone (608)267-0922
Office of Legal Counsel
149 E. Wilson Street
P.O. Box 7925
Madison, WI 53707-7925

Written Comments

Written comments concerning the rules received at the above address no later than **March 10, 1999**, will be given the same consideration as testimony presented at the hearings.

Notice of Hearings

Department of Corrections

Notice is hereby given that pursuant to ss. 227.11 (2) (a), 227.17, and 304.06 (1q), Stats., that the Department of Corrections will hold hearings pursuant to the proposed rule creating ss. DOC 330.01 to 330.17, relating to pharmacological intervention with certain serious child sex offenders. These hearings relate to both the proposed permanent rule and the emergency rule now in effect and published on January 1, 1999.

Hearing Information

March 1, 1999 Monday 12:00 p.m. (noon) – 2:00 p.m.	Room #041 GEF III Bldg. 125 South Webster St. MADISON, WI
March 2, 1999 Tuesday 10:00 a.m. – 12:00 p.m. (noon)	Public Auditorium Wood Co. Courthouse 400 Market St. WISCONSIN RAPIDS, WI

March 3, 1999
Wednesday
10:00 a.m. –
12:00 p.m. (noon)

Rm. 137A
State Office Bldg.
141 N.W. Barstow St.
WAUKESHA, WI

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Dept. of Corrections

These rules are pursuant to recently-enacted legislation, s. 304.06 (1q), Stats., relating to pharmacological intervention with certain serious child sex offenders. These rules create definitions, establish the authority and purpose for requiring pharmacological treatment of sex offenders, establish criteria for screening, establish the duration of treatment and criteria for termination of treatment, and create a hearing and review process prior to the implementation of pharmacological intervention. These rules provide sanctions if a serious child sex offender refuses to comply with the rules and conditions for pharmacological treatment following a hearing that results in a decision that the department may mandate pharmacological treatment for the offender. These rules allow the Department to detain offenders when they fail to cooperate with the implementation process.

The recently-enacted legislation, s. 304.06 (1q), Stats., allows the Department to require compliance with pharmacological intervention as a condition of probation or parole supervision. Rules of probation/parole supervision must be reasonable. Courts in Wisconsin have upheld rules of supervision as reasonable when the rule relates either to the need for community safety or the offender's rehabilitation. The enabling legislative enactment carries with it the presumption that pharmacological treatment of certain child sex offenders promotes the twin goals of community protection and offender rehabilitation.

Offenders selected for pharmacological treatment must meet eligibility requirements by satisfying the statutory definition of serious child sex offender. The Department screening process allows for exempting those offenders who are not proper medical subjects due to a prevailing medical condition that prevents treatment with an antiandrogen or its chemical equivalent. The offender must also have a diagnosis of pedophilia or any other condition for which an antiandrogen may be prescribed to satisfy eligibility requirements. The hearing process allows the offender an opportunity to overcome the legislative presumption for pharmacological treatment by showing that such treatment is not necessary for public protection and will not further the offender's rehabilitation.

Initial Regulatory Flexibility Analysis

Notice is hereby given that pursuant to s. 227.114, Stats., it is not anticipated that the emergency or permanent rule will have an economic impact on small businesses.

Fiscal Estimate

These rules implement pharmacological intervention with certain serious child sex offenders as required by s. 304.06 (1q), Stats. The intent of the Department in promulgating these rules is to comply with this recently enacted statute.

These administrative rules should not have a Departmental fiscal effect separate from the statutory effect.

Contact Information

To obtain a copy of either the emergency or permanent rule or for more information concerning the hearings, write or phone:

Robert G. Pultz
Telephone (608)267-0922
Office of Legal Counsel
149 E. Wilson Street
P.O. Box 7925
Madison, WI 53707-7925

Written Comments

Written comments concerning the rules received at the above address no later than **March 10, 1999**, will be given the same consideration as testimony presented at the hearings.

Notice of Hearing ***Dentistry Examining Board***

Notice is hereby given that pursuant to authority vested in the Dentistry Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and 447.02 (2) (e), Stats., as created by 1997 Wis. Act 96, and interpreting s. 447.04 (2) (c) 1., Stats., the Dentistry Examining Board will hold a public hearing at the time and place indicated below to consider an order to create ch. DE 7, relating to the education required of licensed dental hygienists to receive a certificate to administer local anesthesia to patients.

Hearing Information

March 3, 1999
Wednesday
9:30 a.m.

Room 179A
1400 East Washington Ave.
MADISON, WI

Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **March 19, 1999** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b) and 227.11 (2), Stats., and 447.02 (2) (e), Stats., as created by 1997 Wis. Act 96.

Statute interpreted: s. 447.04 (2) (c) 1., Stats.

This proposed rule-making order of the Dentistry Examining Board promulgates rules mandated under 1997 Wis. Act 96, regarding the education required of dental hygienists to receive a certificate to administer local anesthesia to patients. Under the Act, the scope of practice of a qualified dental hygienist is expanded to permit the administration of local anesthesia pursuant to a treatment plan approved by a dentist who is present in the dental facility when local anesthesia is administered and is available to the patient throughout the completion of the appointment. These rules establish the education required of a dental hygienist to administer local anesthesia, as well as the application procedures for receiving a certificate from the Board to perform that function. The rules were developed in conjunction with the Wisconsin Dental Association and the Wisconsin Dental Hygienists' Association.

The rules require that a dental hygienist must complete 21 hours of instruction in local anesthesia provided by an accredited dental or dental hygiene school. The course must be comprised of at least 10 hours in didactic instruction in relevant subject areas, and at least 11 hours in the clinical administration of local anesthesia.

Text of Rule

SECTION 1. Chapter DE 7 is created to read:

Chapter DE 7

CERTIFICATION OF DENTAL HYGIENISTS TO ADMINISTER LOCAL ANESTHESIA

DE 7.01 Authority. The rules in this chapter are adopted pursuant to ss. 15.08 (5) (b), 227.11 (2) and 447.02 (2) (e), Stats.

DE 7.02 Definitions. As used in this chapter:

- (1) "Accredited" has the meaning under s. 447.01 (1), Stats.
- (2) "Board" means the dentistry examining board.

DE 7.03 Qualifications for certification of licensed dental hygienists to administer local anesthesia. An applicant for certification to administer local anesthesia shall be granted a certificate by the board if the applicant complies with all of the following:

- (1) Has a current license to practice as a dental hygienist in this state.
- (2) Provides evidence of current qualification in cardiopulmonary resuscitation.
- (3) Has completed the educational requirements of s. DE 7.05.
- (4) Has submitted the information required in the application under s. DE 7.04.

DE 7.04 Application procedure. An applicant for a certificate to administer local anesthesia shall file a completed application on a form provided by the board. The application shall include all of the following:

- (1) The dental hygienist license number in this state and the signature of the applicant.
- (2) Evidence of current qualification in cardiopulmonary resuscitation.
- (3) Evidence of successful completion of a didactic and clinical program sponsored by an accredited dental or dental hygiene program, resulting in the dental hygienist becoming competent to administer local anesthesia under the delegation and supervision of a dentist, the curriculum of which meets or exceeds the basic course requirements set forth in s. DE 7.05.
- (4) For those dental hygienists who are currently employed and taking this course as continuing education outside of the initial accredited dental hygiene program, the administration of local anesthesia on a non-classmate may be performed at the place where the dental hygienist is currently employed. In those instances the application:
 - (a) Must contain a statement from the employing dentist that he or she supervised and verifies the successful completion of an inferior alveolar injection on a patient who was informed of the situation and granted his or her consent to the dentist, and that the dentist assumed liability for the injection performed on the patient.

(b) Must indicate that the inferior alveolar injection was completed within 6 weeks from the time that the licensed dental hygienist completed the coursework; or, if licensed by endorsement of a dental hygienist license from another state, within 6 weeks of becoming licensed as a dental hygienist in this state.

Note: Applications are available upon request to the board office at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

DE 7.05 Educational requirements. The following educational requirements are necessary for the board to approve and grant certification to a licensed dental hygienist in the administration of local anesthesia:

(1) The course in the administration of local anesthesia shall be provided by an accredited dental or dental hygiene school.

(2) To participate in a course in the administration of local anesthesia, a person shall do all of the following:

(a) Show evidence of current qualification in cardiopulmonary resuscitation.

(b) Provide proof of possessing a current license to practice as a dental hygienist in this state, or having graduated from an accredited dental hygiene program, or of being currently enrolled in an accredited dental hygiene program.

(3) The local anesthesia course must have the following components and provide a minimum of 21 hours of instruction:

(a) Didactic instruction. Minimum of 10 hours, including but not limited to the following topics:

1. Neurophysiology and pain perception.
2. Basic pharmacology and drug interactions.
3. Chemistry, pharmacology and clinical properties of local anesthesia, vasoconstrictors, and topical anesthesia.
4. Anatomical considerations for the administration of anesthesia.
5. Patient assessment for the administration of anesthesia.
6. Selection and preparation of armamentarium.
7. Recognition, management and emergency response to local complications.
8. Recognition, management and emergency response to systemic complications.
9. Ethical and legal considerations.
10. Techniques for regional anesthesia.

(b) Experience in the clinical administration of local anesthesia. Minimum of 11 hours in the following techniques:

1. Maxillary.
 - a. Posterior superior alveolar (PSA).
 - b. Middle superior alveolar (MSA).
 - c. Anterior superior alveolar (ASA).
 - d. Greater/lesser palatine (G/LP).
 - e. Nasopalatine (NP).
 - f. Supraperiosteal (infiltration) injection.
2. Mandibular.
 - a. Inferior alveolar/lingual (IA/L).
 - b. Mental/incisive nerve block.
 - c. Buccal nerve.
 - d. Periodontal ligament injection.
 - e. Intraosseal injection (IS).

(c) Students performing injections as part of the clinical coursework must successfully perform all local anesthesia injections on their classmates as well as perform at least one successful inferior alveolar injection on a non-classmate patient. For those licensed dental hygienists who are completing this course in the continuing education environment, the injection on a non-classmate patient may be performed in the office where the dental hygienist is currently employed, as long as the employer-dentist agrees to supervise and submit verification of the successful completion of the injection.

(d) A dentist licensed under ch. 447, Stats., must be present in the facility and available to both the patients and to the students of the class.

DE 7.06 Dentist responsibility for the administration of local anesthetic. The dentist is ultimately responsible for all decisions regarding the administration of local anesthetic, particularly in determining the pharmacological and physiological considerations of each individual treatment plan.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the Department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to:

Pamela Haack
Department of Regulation and Licensing
Office of Administrative Rules
1400 East Washington Avenue, Room 171
P.O. Box 8935
Madison, WI 53708

Telephone (608) 266-0495

Notice of Hearing ***Financial Institutions*** ***(Division of Banking)***

Notice is hereby given that pursuant to ss. 224.72 (8) and 224.73 (3), Stats. and 1997 Wis. Act 145, Section 72, the Department of Financial Institutions, Division of Banking will hold a public hearing at the time and place indicated below to consider amending ch. RL 41 (title), and repealing and recreating ss. RL 41.01 and 41.02, relating to the registration and renewal of registration fees for mortgage bankers, loan originators and mortgage brokers; the transfer fee for loan originators; and the registration periods for all registration and renewals of registrations.

Hearing Information

March 3, 1999
Wednesday
10:00 a.m.

Thompson Conference Rm.
5th Floor, DFI
345 W. Washington Ave.
MADISON, WI

This hearing is held in an accessible facility.

Analysis Prepared by Dept. of Financial Institutions, Division of Banking

The proposed rule will amend ch. RL 41 (title) as DFI—Bkg 41. The proposed rule will repeal and recreate ss. RL 41.01 and 41.02 as ss. DFI—Bkg 41.01 and 41.02. Under s. DFI—Bkg 41.01, the following fees for all registrations and renewals of registration under subch. II, ch. 224, Stats. apply:

- Mortgage banker, \$1,000;
- Loan originator, \$250; and
- Mortgage broker, \$750.

A certificate of registration may be renewed prior to expiration by making application on Department form and paying the appropriate fee. A certificate of registration may be renewed after expiration by making application on Department form, paying the appropriate fee, and paying a late fee of \$100. A loan originator may transfer employment to another registered mortgage banker or mortgage broker by making an application on Department form and paying a transfer fee of \$20. Under s. DFI—Bkg 41.02, the registration period for a certificate issued after January 1, 1999 is 2 years. The administrator of the Division of Banking shall randomly select one-half of all certificates issued on or before January 1, 1999 to have a registration period of one year and to pay one-half of the renewal fee. The remaining one-half of all certificates issued on or before January 1, 1999 shall have a registration period of two years.

Initial Regulatory Flexibility Analysis

The proposed rule may have an impact on small businesses.

1. Types of small businesses that will be affected by the rule: Mortgage bankers and mortgage brokers.
2. Proposed reporting, bookkeeping and other procedures required for compliance with the rule: No new procedures.
3. Types of professional skills necessary for compliance with the rule: No new skills.

Fiscal Estimate

The proposed rule is expected to increase existing state revenues due to an increase in fees. Under the proposed rules, there are no local government costs. The proposed rule makes the fees more comparable to industry standards and similar licenses. The proposed rule's staggered renewal process gives certificate holders the full term of their registration and makes the renewal process more manageable for the Department. The long-range fiscal implication is an evening of revenue stream from year-to-year.

Contact Information

For questions concerning the proposed rule, or for a copy of the proposed rule and the full fiscal estimate from the agency upon request and at no charge, contact:

Michael J. Mach, Administrator
Department of Financial Institutions
Division of Banking
345 W. Washington Ave., 4th Floor
Madison, WI 53703

Telephone (608) 266-0451

Notice of Hearing

Funeral Directors Examining Board

Notice is hereby given that pursuant to authority vested in the Funeral Directors Examining Board in ss. 15.08 (5) (b), 227.11 (2), 445.03 (2) (a) and 445.124 (3m) (j) 2., Stats., and interpreting s. 445.12 (3g), Stats., the Funeral Directors Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal s. FD 6.10 (1) (a), (b), (c), (2) (a), (4) and (5); to renumber and amend s. FD 6.10 (1) (intro.), (2) (b) (intro.), 1., 2., 3. and 5.; to repeal and recreate s. FD 6.10 (3); and to create s. FD 6.10 (1) (title), (2) (title), (b) to (e), relating to the solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy.

Hearing Information

March 16, 1999 Room 291
Tuesday 1400 East Washington Ave.
10:00 a.m. MADISON, WI

Written Comments

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation, but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by **March 30, 1999** to be included in the record of rule-making proceedings.

Analysis Prepared by the Dept. of Regulation & Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11 (2), 445.03 (2) (a) and 445.124 (3m) (j) 2., Stats.

Statute interpreted: s. 445.12 (3g), Stats.

This proposed rule-making order of the Funeral Directors Examining Board pertains to the solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy. The primary purpose of this rule-making is to remove the date of January 1, 2000, from s. FD 6.10 (5). Unless this date is removed, a funeral director, an owner of a funeral establishment or an agent would no longer be able to solicit the sale of burial agreements funded with the proceeds of a life insurance policy by telephone. By removing the date from s. FD 6.10 (5), the rest of the section becomes obsolete and this proposal simply repeals the whole subsection.

This proposed rule-making order also clarifies the provisions in each subsection in the rule by creating a title for each subsection, combining several subsections which relate to the same type of solicitation, and rewording some of the provisions. A minor policy change relates to removing the word "standard" from "central standard time" in the current s. FD 6.10 (2) (b) 2.

This proposal creates a new s. FD 6.10 (3), for the purpose of clarifying the issue of door-to-door solicitations of burial agreements funded with the proceeds of a life insurance policy; however, the newly-created section does not create any new policy. Section 445.12 (3g), Stats., prohibits door-to-door solicitation.

Text of Rule

SECTION 1. FD 6.10 (1) (title) is created to read:

FD 6.10 (1) AUTOMATED TELEPHONE CALLS.

SECTION 2. FD 6.10 (1) (intro.) is renumbered s. FD 6.10 (1) and amended to read:

FD 6.10 (1) ~~No~~ A funeral director, owner of a funeral establishment, or agent may ~~only~~ initiate ~~any~~ a telephone call using an ~~automatic~~ automated telephone dialing system or an artificial or prerecorded voice system for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy ~~to any of the following: when calling a residential or business telephone line, provided that the~~ funeral director, owner of a funeral establishment, or agent obtains the prior express written consent of the party to be called.

SECTION 3. FD 6.10 (1) (a), (b) and (c) are repealed.

SECTION 4. FD 6.10 (2) (title) is created to read:

FD 6.10 (2) LIVE-VOICE TELEPHONE CALLS.

SECTION 5. FD 6.10 (2) (a) is repealed.

SECTION 6. FD 6.10 (2) (b) (intro.), 1., 2., 3. and 4. are renumbered s. FD 6.10 (2) (a) (intro.), 1., 2., 3. and 4. and s. FD 6.10 (2) (a) (intro.), as renumbered, is amended to read:

FD 6.10 (2) (a) ~~Written~~ A funeral director, owner of a funeral establishment, or agent sends written notice ~~shall advise the customer to the prospective purchaser at least 10 days in advance of the call, advising the prospective purchaser of all of the following:~~

SECTION 7. FD 6.10 (2) (b), (c), (d) and (e) are created to read:

FD 6.10 (2) (b) The telephone caller immediately begins the conversation by providing the called party with the name of the funeral director, owner of the funeral establishment, or agent, the name of the person or entity upon whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.

(c) The telephone caller records the name and telephone number of persons who request placement on a do-not-call list at the time the request is made and the caller agrees to make no further calls to a person who has requested placement on the list.

(d) A telephone call is only made to a prospective purchaser or the prospective purchaser's authorized representative requests the call.

(e) A telephone call is only made to a prospective purchaser of a burial agreement funded by the proceeds of a life insurance policy whose death is imminent or appears to be imminent, if the prospective purchaser or the prospective purchaser's authorized representative requests the call.

SECTION 8. FD 6.10 (3) is repealed and recreated to read:

FD 6.10 (3) DOOR-TO-DOOR SOLICITATION. A funeral director, owner of a funeral establishment, or an agent may not contact a prospective purchaser of a burial agreement funded with the proceeds of a life insurance policy by door-to-door solicitation.

SECTION 9. FD 6.10 (4) and (5) are repealed.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.

2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.

3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Final Regulatory Flexibility Analysis

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Information

Copies of this proposed rule are available without cost upon request to:

Pamela Haack
Dept. of Regulation and Licensing
Office of Administrative Rules
1400 East Washington Ave., Room 171
P.O. Box 8935
Madison, WI 53708

Telephone (608) 266-0495

Notice of Hearing

Commissioner of Insurance

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth under ss. 227.18 and 227.24 (4), Stats., the Office of the Commissioner of Insurance will hold a public hearing to consider both the emergency rule promulgated December 16, 1998 and the adoption of the proposed rulemaking order affecting s. Ins 2.80, Wis. Adm. Code, relating to valuation of life insurance policies model regulation.

Hearing Information

March 12, 1999 Room 23, OCI
Friday 121 East Wilson St.
10:00 a.m. MADISON, WI

Written Comments

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 7 days following the date of the hearing. Written comments should be addressed to:

Stephen Mueller, OCI
P.O. Box 7873
Madison, WI 53707

Analysis Prepared by the Office of the Commissioner of Insurance

Statutory authority: s. 601.41 (3) and Ch. 623, Stats.

Statutes interpreted: Ch. 623, Stats.

On December 16, 1997 the Commissioner created s. Ins 2.80, Wis. Adm. Code adopting the 1995 National Association of Insurance Commissioners ("NAIC") valuation of life insurance policies model regulation, or "XXX" and tables of select mortality factors. This rule concerning requirements for determining the valuation of reserve liabilities for life insurance policies was to take effect on January 1, 1999. However, by emergency rule the Commissioner delayed effectiveness of the 1995 NAIC XXX model regulation in Wisconsin until July 1, 1999.

Few states adopted the 1995 NAIC XXX model regulation and in 1998 a consortium of NAIC and insurance industry representatives endeavored to establish a set of valuation mortality standards more in line with current experience, thereby making uniform adoption by the states more likely. As a result of this effort on December 5, 1998 the NAIC Life and Health Actuarial Task Force adopted revisions to XXX (the 1998 NAIC XXX model regulation) which the full NAIC is expected to approve at its March 1999 meeting. This proposed rule would substitute the 1998 NAIC XXX model regulation and tables of select mortality factors for the 1995 version and make it effective January 1, 2000.

This rule results from a revision of a current rule. However due to its highly technical nature, OCI has elected to repeal and recreate the rule in order to keep it in a form as similar as possible to the NAIC model yet comply with Wisconsin rule-drafting requirements. The current rule has not yet been put into effect so showing changes to that rule is not informative. However a "line and strike" version is available showing the differences between the 1995 and 1998 NAIC model regulations and will be available at the hearing. The new tables of select mortality factors are attached and are incorporated as an appendix to the rule. OCI may request approval from the attorney general and revisor to incorporate the tables by reference to the appropriate NAIC or other publication.

The American Academy of Actuaries, their Actuarial Standards Board and the Society of Actuaries have given the opinion that this rule and attached tables of select mortality factors meet the requirements of the standard evaluation law (Ch. 623 Stats.). OCI's actuary has stated that adoption of this rule meets the actuarial opinion requirement s. 623.06 (1m) (a) 1.c., Stats., and the revised tables comply with s. 623.06 (2) (am) 3., Stats.

Fiscal Estimate

There will be no state or local government fiscal effect.

Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

Contact Information

A copy of the full text of the proposed rule and fiscal estimate may be obtained from:

Tammi Kuhl, Services Section
Office of the Commissioner of Insurance
Telephone (608) 266-0110
or at:
121 East Wilson Street
P.O. Box 7873
Madison, WI 53707-7873

Notice of Hearing *Commissioner of Insurance*

Notice is hereby given that pursuant to the authority granted under s. 601.41 (3), Stats., and the procedure set forth under s. 227.18, Stats., the Office of the Commissioner of Insurance will hold a public hearing to consider the adoption of the proposed rule-making order affecting s. Ins 3.39 (34) (b) 1. and 2., (b) 3. b. and 6., Wis. Adm. Code, relating to guarantee issue liability for Medicare Supplement insurance.

Hearing Information

March 3, 1999
Wednesday
10:00 a.m.

Room 6, OCI
121 East Wilson St.
MADISON, WI

Written Comments

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 14 days following the date of the hearing. Written comments should be addressed to:

Robert Luck, OCI
P.O. Box 7873
Madison, WI 53707

Analysis Prepared by the Office of the Commissioner of Insurance

Statutory authority: ss. 600.01 (2), 601.41 (3), 601.42, 628.34 (12) and 628.38, Stats.

Statutes interpreted: ss. 600.01, 628.34 (12) and 628.28, Stats.

These changes will clarify the persons eligible who have the right to have policies guaranteed issued. The changes track the recent revisions in the NAIC (National Association of Insurance Commissioners) model Medicare Supplement regulations.

Text of Rule

SECTION 1. Section Ins 3.39 (34) (b) 1., 2., (b) 3. b. and (b) 6. are amended to read:

Ins 3.39 (34) (b) 1. The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under medicare; and the plan terminates, or the plan ceases to provide some or all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan:

2. The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of medicare, and any of the following circumstances apply: there are circumstances permitting discontinuance of the individual's election of the plan under the first sentence of section 1851 (e) (4) of the federal Social Security Act, which consists of the following:

“Effective as of January 1, 2002, an individual may discontinue an election of a Medicare+Choice plan offered by a Medicare+Choice organization other than during an annual, coordinated election period [under Medicare] and make a new election under this section if:

- a. 4. The organization's or plan's certification [under this part] has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;
- b. 2. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851 (g) (3) (B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

- c. 3. The individual demonstrates, in accordance with guidelines established by the Secretary, that:
- i. 4. The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or
 - ii. 5. The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or
 - d. 4. The individual meets such other exceptional conditions as the Secretary may provide."
- (b) 3.b. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under the first sentence of Section 1851(e)(4) of the federal Social Security Act as delineated above in subd. (b)2.
- (b) 6. The individual, upon first becoming enrolled in Medicare part B eligible for benefits under part A of medicare, enrolls in a Medicare+Choice plan under part C of medicare, and disenrolls from the plan by not later than 12 months after the effective date of enrollment.

Fiscal Estimate

There will be no state or local government fiscal effect.

Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

Contact Information

A copy of the full text of the proposed rule changes and fiscal estimate may be obtained from:

Tammi Kuhl, Services Section
Office of the Commissioner of Insurance
Telephone (608) 266-0110
or at:
121 East Wilson Street
P.O. Box 7873
Madison, WI 53707-7873

Notice of Hearing ***Medical Examining Board***

Notice is hereby given that pursuant to authority vested in the Medical Examining Board in ss. 15.08 (5) (b) and 227.11 (2), Stats., and s. 448.05 (5) (a) (intro.), Stats., as amended by 1997 Wisconsin Act 67, and interpreting ss. 448.01 (6), 448.02 (1), 448.03 (1) (b), (e) and (3) (e), 448.04 (1) (f), 448.05 (5), 448.20 (1), (3) (a), 448.21 and 448.40 (2) (f), Stats., the Medical Examining Board will hold a public hearing at the time and place indicated below to consider an order to repeal Med 8.05 (2) (b) 10. and 11.; to renumber and amend Med 8.02 (3); to amend Med 8.01, 8.02 (6), 8.03, 8.04, 8.05, (1) (intro.), the Note following 8.05 (1) (a), and (cm), (2) (b) 5., (c) and (d), (4) (title) and (4), 8.06 (title), (1) (intro.), (b), (c), (2) (a), (b) and (3), 8.07 (1), (2) (title), (2) (intro.), (c), (e), (f) and (i), 8.08 (title), (1), (2) (intro.), (a), (b), (c), (d), (e), 2. and 3. and 8.10 (1); and to create Med 8.06 (4), relating to licensure and regulation of physician assistants.

Hearing Information

March 25, 1999 **1400 E. Washington Ave.**
Monday **Room 179A**
9:00 a.m. **Madison, WI**

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Regulation and Licensing, Office of Administrative Rules, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received by March 10, 1999 to be included in the record of rule-making proceedings.

Analysis prepared by the Department of Regulation and Licensing

Statutes authorizing promulgation: ss. 15.08 (5) (b)
and 227.11 (2), Stats., and s. 448.05 (5) (a) (intro.),
as amended by 1997 Wis. Act 67

Statutes interpreted: ss. 448.01 (6), 448.02 (1), 448.03 (1) (b), (2) (e) and (3) (e), 448.04(1) (f), 448.05 (5), 448.20 (1), (3) (a), 448.21 and 448.40 (2) (f)

This proposed rule-making order of the Medical Examining Board amends chapter Med 8 as required by 1997 Wisconsin Act 67.

The new law required that the board promulgate rules specifying changing the terms “patient services” to “medical care”; changing the credentialing title from “certification” to “licensure”; and changing the prescribing limitations from “protocols” to “guidelines.” These proposed rules also make form and clarity changes to which questions have arisen and the board feels might best be clarified by minor changes to the rules.

Text of Rule

SECTION 1. Med 8.01 is amended to read:

Med 8.01 **Authority and purpose.** The rules in this chapter are adopted by the medical examining board pursuant to authority in ss. 15.08 (5) (b), 227.11, 448.04 (1) (f) and 448.40, Stats., and govern the ~~certification~~ licensure and regulation of physician assistants.

SECTION 2. Med 8.02 (3) is renumbered Med 8.02 (5m) and amended to read:

Med 8.02 (5m) “Certification” “Licenses” means documentary evidence issued by the board to applicants for ~~certification~~ licensure as a physician assistant who meet all of the requirements of the board.

SECTION 3. Med 8.02 (6) is amended to read:

Med 8.02 (6) “Supervision” means to coordinate, direct, and inspect ~~continually~~ the accomplishments of another, or to oversee with powers of direction and decision the implementation of one’s own or another’s intentions.

SECTION 4. Med 8.03 and 8.04 are amended to read:

Med 8.03 **Council.** As specified in s. 15.407 (1) and (2), Stats., the council shall advise the board on the formulation of rules on the education, examination, ~~certification~~ licensure and practice of a physician assistant.

Med 8.04 **Educational program approval.** The board shall approve only educational programs accredited and approved by the committee on allied health education and accreditation of the American medical association, ~~the commission for accreditation of allied health education programs, or its successor agency.~~

SECTION 5. Med 8.05, (1) (intro.), the Note following (1) (a), and (cm) are amended to read:

Med 8.05 **Panel review of applications; examinations required.** The board may use a written examination prepared, administered and scored by the national commission on certification of physician assistants or its successor agency, or a written examination from other professional testing services as approved by the board.

(1) APPLICATION. (intro.) An applicant for examination for ~~certification~~ licensure as a physician assistant shall submit to the board:

Note: An application form may be obtained upon request to the Medical Examining Board located at Room 176, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53702 53708.

(cm) Proof that the applicant is currently certified to assist ~~primary care physicians~~ by the national commission on certification of physician assistants or its successor agency.

SECTION 6. Med 8.05 (2) (b) 5. is amended to read:

Med 8.05 (2) (b) 5. Has not practiced ~~patient care~~ as a physician assistant for a period of 3 years prior to application, unless the applicant has been graduated from a ~~school approved~~ approved educational program for physician assistants within that period.

SECTION 7. Med 8.05 (2) (b) 10. and 11. are repealed.

SECTION 8. Med 8.05 (2) (c) and (d) are amended to read:

Med 8.05 (2) (c) An application filed under this chapter shall be reviewed by an application review panel of at least 2 council members designated by the chairperson of the board to determine whether an applicant is required to complete an oral examination under par. (a). If the application review panel is not able to reach unanimous agreement on whether an applicant is eligible for ~~certification~~ licensure without completing an oral examination, the application shall be referred to the board for a final determination.

(d) Where both written and oral examinations are required they shall be scored separately and the applicant shall achieve a passing grade on both examinations to qualify for a ~~certification~~ licensure.

SECTION 9. Med 8.05 (4) (title) and (4) are amended to read:

Med 8.05 (4) (title) ~~CERTIFICATION LICENSURE~~; RENEWAL. At the time of ~~certification~~ licensure and each biennial registration of ~~certification~~ licensure thereafter, a physician assistant shall list with the board the name and address of the supervising physician and shall notify the board within 20 days of any change of a supervising physician.

SECTION 10. Med 8.06 (title), (1) (intro.), (b), (c), (2) (a), (b) and (3) are amended to read:

Med 8.06 (title) **Temporary certification license.** (1) (intro.) An applicant for ~~certification~~ licensure may apply to the board for a temporary ~~certification~~ license to practice as a physician assistant if the applicant:

(b) Is a graduate of an approved school and is scheduled to take the examination for ~~primary care physician’s~~ physician assistants required by s. Med 8.05 (1) or has taken the examination and is awaiting the results; or

(c) Submits proof of successful completion of the examination required by s. Med 8.05 (1) and applies for a temporary ~~certification~~ license no later than 30 days prior to the date scheduled for the next oral examination.

(2) (a) Except as specified in par. (b), a temporary ~~certificate~~ license expires on the date the board grants or denies an applicant permanent ~~certificate~~ license. Permanent ~~certificate~~ license to practice as a physician assistant is deemed denied by the board on the date the applicant is sent notice from the board that he or she has failed the examination required by s. Med 8.05 (1) (c).
(b) A temporary ~~certificate~~ license expires on the first day of the next regularly scheduled oral examination for permanent ~~certificate~~ license if the applicant is required to take, but failed to apply for, the examination.

(3) A temporary ~~permit~~ license may not be renewed.

SECTION 11. Med 8.06 (4) is created to read:

Med 8.06 (4) An applicant holding a temporary license may apply for one transfer of supervising physician and location during the term of the temporary license.

SECTION 12. Med 8.07 (1), (2) (title), (2) (intro.), (c), (e), (f) and (i) are amended to read:

Med 8.07 (1) **SCOPE AND LIMITATIONS.** In providing ~~patient services~~ medical care, the entire practice of any physician assistant shall be under the supervision of a licensed physician. The scope of practice is limited to providing ~~patient services~~ medical care specified in sub. (2). A physician assistant's practice may not exceed the scope of practice of the supervising physician. A medical care task assigned by the supervising physician to a physician assistant may not be delegated by the physician assistant to another person.

(2) (title) **PATIENT SERVICES MEDICAL CARE.** (intro.) ~~Patient services~~ Medical care a physician assistant may provide ~~include~~ includes:

(c) Performing routine therapeutic procedures, including, ~~but not limited to~~, injections, immunizations, and the suturing and care of wounds.

(e) Assisting the supervising physician in a hospital or facility, as defined in s. 50.01 (1m), Stats., by assisting in surgery, making patient rounds, recording patient progress notes, compiling and recording detailed narrative case summaries and accurately writing or executing ~~standing orders or other specific orders following consultation with~~ and at the ~~direction of the~~ supervising under the supervision of a licensed physician.

(f) Assisting in the delivery of services medical care to a patient by reviewing and monitoring treatment and therapy plans.

(i) ~~Preparing~~ Issuing written prescription orders for drugs if ~~specifically directed to do so by the~~ supervising under the supervision of a licensed physician and in accordance with procedures specified in s. Med 8.08 (2).

SECTION 13. Med 8.08 (title), (1), (2) (intro.), (a), (b), (c), (d), (e), (2) and 3. are amended to read:

Med 8.08 (title) **Prohibitions and Prescribing limitations.** (1) **ACUPUNCTURE AND INDEPENDENT PRESCRIBING PROHIBITED.** A physician assistant may not practice acupuncture in any form and may not prescribe or dispense any drug independently. A supervising physician may direct a physician assistant to prepare a prescription order according to procedures specified in sub. (2).

(2) **PRESCRIBING LIMITATIONS:** (intro.) A physician assistant may prepare issue a prescription order only if all of the following conditions apply:

(a) The physician assistant prepares issues the prescription order only in patient situations specified and described established written protocols guidelines. The protocol guidelines shall be reviewed at least annually by the physician assistant and his or her supervising physician.

(b) The supervising physician and physician assistant determine by mutual agreement that the physician assistant is qualified through training and experience to prepare issue a prescription order as specified in the established written protocols guidelines.

(c) ~~When practicable, the physician assistant consults directly with the supervising physician prior to preparing a prescription order.~~ In any case the The supervising physician shall be is available for consultation as specified in s. Med 8.10 ~~(2)~~ (3).

(d) The prescription orders prepared under procedures in this section contain, in addition to other information required by law, the name, address and telephone number of the supervising physician, the DEA registration number of the supervising physician if the prescription is prepared for a controlled substance, the name and address of the physician assistant, legibly printed, the DEA registration number of the physician assistant if the prescription is prepared for a controlled substance and if the physician assistant is registered with DEA, and the signature of the physician assistant.

(e) 2. Reviews and countersigns within ~~one day~~ 72 hours the patient record prepared by the physician assistant practicing in the office of the supervising physician or at a facility or a hospital in which the supervising physician has staff privileges; or

3. Reviews by telephone or other means, as soon as practicable but within a ~~48-hour~~ 72-hour period, and countersigns within one week, the patient record prepared by the physician assistant who practices in an office facility other than the supervising physician's main office of a facility or hospital in which the supervising physician has staff privileges.

SECTION 14. Med 8.10 (1) is amended to read:

Med 8.10 (1) No physician may concurrently supervise more than 2 physician assistants unless the physician submits a written plan for the supervision of more than 2 physician assistants and the board approves the plan. A physician assistant may be supervised by more than one physician.

Fiscal Estimate

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

Initial Regulatory Flexibility Analysis

These proposed rules will be reviewed by the department through its Small Business Review Advisory Committee to determine whether there will be an economic impact on a substantial number of small businesses, as defined in s. 227.114 (1) (a), Stats.

Copies of Rule and Contact Person

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708 (608) 266-0495.

Notice of Hearing

Revenue

Notice is hereby given that pursuant to s. 227.11 (2) (a), Stats., and interpreting s. 77.54 (9a), Stats., s. 77.51 (18) and (22) (a), Stats., as amended by 1997 Wis. Act 27 and s. 77.54 (43), Stats., as created by 1997 Wis. Act 27, the Department of Revenue will hold a public hearing at the time and place indicated below, to consider the amendment of rules relating to printed material exemptions and the sales and use tax treatment of advertising agencies.

Hearing Information

February 26, 1999 Room #207, GEF 3
Friday 125 South Webster St.
10:00 a.m. MADISON, WI

Handicap access is available at the Butler Street entrance of the building.

Written Comments

Interested persons are invited to appear at the hearing and may make an oral presentation. It is requested that written comments reflecting the oral presentation be given to the Department at the hearing. Written comments may also be submitted to the contact person shown below no later than **March 5, 1999**, and will be given the same consideration as testimony presented at the hearing.

Contact Information

Mark Wipperfurth, (608) 266-8253
Department of Revenue
125 South Webster St.
P.O. Box 8933
Madison, WI 53708-8933

Analysis by the Dept. of Revenue

Statutory authority: s. 227.11 (2) (a), Stats.
Statutes interpreted: s. 77.54 (9a), Stats., s. 77.51 (18) and (22) (a), Stats., as amended by 1997 Wis. Act 27, and s. 77.54 (43), Stats., as created by 1997 Wis. Act 27

SECTION 1. Tax 11.19 (2) (d) and (f) and (5) (intro.) and (b) are amended to reflect the amendment of s. 77.51 (18) and (22) (a), Stats., and the creation of s. 77.54 (43), Stats., by 1997 Wis. Act 27. These changes provide a sales tax exemption for raw materials of printed materials transported and used solely outside of Wisconsin. Previously, these materials were only exempt from use tax.

Section Tax 11.19 (6) is amended, to clarify that the exemption for governmental units applies only to Wisconsin governmental units, and to reflect that certificate of exempt status numbers are being given to governmental units.

SECTION 2. Tax 11.70 (3) (m) is created, to reflect the amendment of s. 77.51 (18) and (22) (a), Stats., and the creation of s. 77.54 (43), Stats., by 1997 Wis. Act 27.

Text of Rule

SECTION 1. Tax 11.19 (2) (d) and (f), (5) (intro.) and (b) and (6) are amended to read:

Tax 11.19 (2) (d) Section 77.54 (2m), Stats., provides an exemption for the “gross receipts from the sales of and the storage, use or other consumption of tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred with charge to the recipient.” This exemption applies to newspapers, shoppers guides and periodicals which are issued at average intervals not exceeding 3 months. It does not apply to advertising supplements that are not newspapers as defined in s. 77.51 (8), Stats.

(f) Section 77.51 (18) and (22) 77.54 (43), Stats., provides that storage and use for purposes of imposing Wisconsin use tax does not include the keeping, retaining or exercising any right or power over a sales and use tax exemption for raw materials for used for the processing, fabricating or manufacturing into, attachment of, attaching to or incorporation into incorporating into, printed materials to be that are transported outside Wisconsin and thereafter used solely outside Wisconsin.

(5) Wisconsin sales and use tax is not imposed on raw materials that would otherwise be subject to use tax under s. 77.53 (1), Stats., purchased by a publisher or printer of printed materials if both of the following conditions are met:

(b) The resulting printed materials will be shipped outside Wisconsin for use transported and used solely outside Wisconsin.

(6) EXEMPT PURCHASERS. Sales of printed material to federal and Wisconsin governmental units; and Wisconsin public schools, and certain nonprofit religious, charitable, educational or scientific organizations holding a certificate of exempt status are exempt under s. 77.54 (9a) or 77.55 (1), Stats. Sales to federal and Wisconsin governmental units and public schools need not be supported by exemption certificates, if a copy of the purchase order from the organization is retained or the governmental unit's certificate of exempt status number is recorded on the bill of sale. Sales to persons nonprofit organizations holding a certificate of exempt status can be shown to be exempt by recording the certificate of exempt status number on the bill of sale.

Note to Revisor: 1) In sub. (3), all quoted statutory material should be in italics.

2) Replace the first note at the end of s. Tax 11.19 with the following:

Note: Section Tax 11.19 interprets ss. 77.51 (8) and (13h), 77.52 (2) (a) 11., 77.54 (2m), (9a), (15), (25) and (43) and 77.55 (1), Stats.

3) In the second note at the end of s. Tax 11.19, remove the word "and" before part (i) and add the following at the end of the note:

; and (j) The sales and use tax exemption for raw materials becoming printed materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27.

SECTION 2. Tax 11.70 (3) (m) is created to read:

Tax 11.70 (3) (m) Raw materials processed, fabricated or manufactured into, attached to or incorporated into printed materials that are transported and used solely outside Wisconsin.

Example: Company A, located in Wisconsin, publishes catalogs it gives away to potential customers. Company A purchases paper from a company who delivers it to a Wisconsin printer that prints the catalogs for Company A. The catalogs are transported and used solely outside Wisconsin.

The paper purchased by Company A for the catalogs is exempt from Wisconsin sales or use tax.

Note to Revisor: 1) At the end of sub. (2) (b), change the word "**Example**" to "**Examples**."

2) In the second example at the end of sub. (2)(c), add the words "by the advertising agency" at the end of the fourth sentence, after "are produced"; also renumber the example from 2 to 3 and add the following new examples:

2) Assume the same facts as Example 1, except that Company C mails 90% of the flyers to customers outside Wisconsin and 10% to customers in Wisconsin. Ten percent of the total charge to Company C by the advertising agency for the flyers, including the preliminary art, finished art and flyers, is subject to tax.

4) Assume the same facts as Example 3, except that 5 dubs are mailed by the advertising agency to radio stations outside Wisconsin.

Fifty percent of the entire charge by the advertising agency for the production of the master tape and dubs is subject to tax. The remaining 50% is not subject to tax because that portion of the sale took place outside Wisconsin.

3) In the example at the end of sub. (3)(j), change "an advertising agency" to "a Wisconsin advertising agency"; also, change the word "**Example**" to "**Examples**," number the example 1, and add the following new example:

2) Assume the same facts as Example 1, except that Company I provides the paper to the printer, in addition to the finished art.

The charge to Company I by the Wisconsin advertising agency for the preliminary art and finished art is subject to Wisconsin sales tax. The printer is selling a printing service, and not tangible personal property, to Company I. The destined for sale requirement is not met and exemption from tax does not apply.

4) In the first note at the end of s. Tax 11.70, change the zip code from "53708" to "53708-8902."

5) Replace the second note at the end of s. Tax 11.70 with the following:

Note: Section Tax 11.70 interprets ss. 77.51 (14) (intro.) and (h) and (14r), 77.52 (1) and (2) and 77.54 (2), (2m), (6) (b), (25) and (43), Stats.

6) In the third note at the end of s. Tax 11.70, remove the word "and" before part (c) and add the following at the end of the note:

; and (d) The sales and use tax exemption for raw materials for printed materials transported and used solely outside Wisconsin became effective December 1, 1997, pursuant to 1997 Wis. Act 27.

Initial Regulatory Flexibility Analysis

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

Fiscal Estimate

This rule reflects the creation of a sales tax exemption for printed materials by 1997 Wis. Act 27. It also clarifies the exemption for sales to governmental units. It has no fiscal effect.

***NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE,
UNDER S. 227.19, STATS.***

Please check the Bulletin of Proceedings for further information on a particular rule.

Administration (CR 98–110):

Ch. Adm 19 – Relating to small cities community development block grants for housing.

Barbering and Cosmetology Examining Board (CR 98–133):

Chs. BC 1 to 9 – Relating to the licensure, examinations and practice of barbering and cosmetology practitioners, managers, manicurists, electrologists, aestheticians and apprentices, and renewal and reinstatement of licenses.

Chiropractic Examining Board (CR 98–141):

S. Chir 4.05 (2) (f), (g) and (h) – Relating to techniques, ancillary procedures or instruments prohibited in the practice of chiropractic.

Health and Family Services (CR 98–136):

SS. HFS 51.01, 51.02, 51.03 and 51.09 – Relating to the applicability of the Department's rules that establish criteria and procedures for placement of special needs children in adoptive homes.

Health and Family Services (CR 98–160):

S. HFS 94.24 (2) (d) 1. d. and (e) – Relating to searches of the persons and of the rooms and personal belongings of patients residing in a secure mental health unit under s. 980.065, Stats., or the maximum security facility at the Mendota mental health institute.

Regulation and Licensing (CR 98–124):

Ch. RL 5 – Relating to charitable organizations.

Regulation and Licensing (CR 98–173):

Chs. RL 140 to 142 – Relating to the registration of music, art and dance therapists.

Revenue (CR 97–29):

S. Tax 11.12 – Relating to the sales and use tax treatment of farmers.

Revenue (CR 98–128):

SS. Tax 11.09 and 11.28 – Relating to medicines and to gifts and other advertising specialties.

ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.

Natural Resources (CR 97-152):

An order creating ch. NR 47, subch. VII, relating to the administration of the private forest landowner grant program.
Effective 04-01-99.

Natural Resources (CR 98-94):

An order amending s. NR 20.08 (10), relating to fishing tournament permitting.
Effective 04-01-99.

PUBLIC NOTICE

Public Notice *Health and Family Services*

(Medical Assistance Reimbursement of Hospitals – Annual Rate Update)

The State of Wisconsin reimburses hospitals for medical services provided to low-income persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. The Wisconsin Department of Health and Family Services administers this program which is called Medicaid or Medical Assistance (MA). Federal statutes and regulations require state plans, one for outpatient services and one for inpatient services, which provide the methods and standards for paying for hospital outpatient and inpatient services including specific payment rates and methodologies.

The Department is proposing to update payment rates based on current methodologies and to reflect more recent hospital cost reports and/or other information relevant to hospital reimbursement. The effective date for the proposed changes is July 1, 1998.

As required by federal statute and regulations, the proposed payment rates are restricted by the federal Medicare upper limit requirement and target a share of funding to hospitals which serve a disproportionate number of low-income patients.

Copies of Proposed Payment Rates

Copies of the proposed new payment rates will be sent to every county social services or human services department main office where they will be available for public review. For more information, interested persons may fax or write to:

Hospital, Physicians and Clinics Unit
FAX (608) 266-1096
Division of Health Care Financing
P. O. Box 309
Madison, WI 53701-0309

Written Comments

Written comments on the proposed change in payment rates are welcome and should be sent to the above address. The comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily at:

Division of Health Care Financing
Room 250, State Office Building
One West Wilson Street
Madison, WI

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